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Book Y25 Y25

In the Court of Claims.

TERM, 1910-11.

THE YANKTON SIOUX INDIANS	} Original petition. No.
v.	
THE UNITED STATES.	
	31253. Filed No-
	vember 7, 1911.

To the honorable the Chief Justice and the Judges of the Court of Claims:

Your petitioners, the Yankton Sioux Indians, respectfully show and represent unto your honor that—

I.

The Yankton Sioux Indians, the petitioners in this case, comprise those persons who were parties to the treaty between the United States and the Yankton Sioux Indians made and entered into in 1858 (11 Stat., 743), ratified February 16, 1859, proclaimed February 26, 1859, being also the persons described in article 16 of the treaty made and entered into with the Yankton Sioux Indians August 15, 1894 (28 Stat., 318), together with those individuals, heads of families, and other legal representatives entitled to receive the benefits of said treaties.

II.

That the Yankton Sioux Indians are either the original parties to said treaties above referred to or their descendants, and L. B. French has been employed by the United States to represent their interests in the claim which is the subject matter of this suit, he being the attorney whose name is appended to this petition.

III.

THE CLAIM.

Your petitioners further protesting that the matters of difference between themselves and the United States have been fully and finally adjudicated by the treaties above referred to and by certain acts of the Interior Department of the United States, and certain acts of the Congress of the United States to which reference is hereinafter made, and now especially disclaiming that they have any purpose to evade the result of said treaties and acts of the Interior Department and laws of Congress, state that they claim from the United States the full interest, title, ownership, and right of possession of said tribe of Indians in and to the following lands and premises, to wit: The lands described and indicated on the township plats of the Government legal survey thereof approved August 15, 1872, by the surveyor general of the State of Minnesota as lying in sections 1 and 2 of township 106 north, range 46 west, and sections 35 and 36 of township 107 north, range 46 west of the fifth principal meridian containing 648.2 acres, more or less, and embracing the red pipestone quarries.

IV.

JURISDICTION OF THE COURT.

By an item of the Indian appropriation bill of 1910, approved April 4, 1910, it was provided as follows:

That jurisdiction be, and hereby is, conferred upon the Court of Claims of the United States to hear and report a finding of fact, as between the United States and the Yankton Tribe of Indians of South Dakota, as to the interest, title, ownership, and right of possession of said tribe of Indians in and to the following lands and premises, to wit: The said lands above described and indicated by the township plat of the Government legal survey approved August 15, 1872, by the surveyor general for the State of Minnesota as lying in sections 1 and

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2 of township 106 north, range 46 west, and sections 35 and 36 of township 107 north, range 46 west of the fifth principal meridian, containing 648.2 acres, more or less, and embracing the red pipestone quarries. Proceedings shall be commenced by petition in the name of said Yankton Tribe of Indians, which petition shall be verified by the attorney or attorneys for said Indians. The proceedings shall in all respects be conducted without cost or expense to said Indians, and the United States, through the Secretary of the Interior, shall furnish without cost to said Indians a competent attorney or attorneys to appear for and represent them in said proceedings, the attorneys' fee therefor to be fixed by the Secretary of the Interior.

In an item of the appropriation for contingent expenses of the Bureau of Indian Affairs passed and approved March 3, 1911, there is found the following:

There is hereby appropriated the sum of \$5,000, or so much thereof as may be necessary, to be immediately available, for the purpose of defraying the costs and expenses, including the compensation of counsel, in the proceedings authorized to be brought in the Court of Claims by provisions in section 22 of the Indian appropriation act for the fiscal year 1911, approved April 4, 1910, between the United States and the Yankton Tribe of Indians of South Dakota, to determine the interest, title, ownership, and right of possession of said tribe of Indians in and to certain lands and premises therein described, said section being found under the title of Minnesota, section 8.

V.

The treaty above referred to as having been made in 1858, so far as relates to this matter, reads as follows:

ART. VIII. The said Yankton Indians shall be secured in the free and unrestricted use of the red pipestone quarry or so much thereof as they have been accustomed to frequent and use for the purpose of procuring stone for pipes; and the United States hereby stipulate and agree to cause to be surveyed and marked so much thereof as shall be necessary and proper for that purpose, and retain the same and keep it open and free to the Indians, to visit and procure stone for pipes so long as they shall desire.

VI.

The treaty made between the Yankton Sioux Indians and the Government of the United States, made in 1892 and ratified in 1894 (28 Stat., 318), being article 16 of that treaty, reads as follows:

If the Government of the United States questions the ownership of the Pipestone Reservation by the Yankton Tribe of Sioux Indians, under the treaty of April 19, 1858, including the fee to the land, as well as the right to work the quarries, the Secretary of the Interior shall as speedily as possible refer the matter to the Supreme Court of the United States, to be decided by that tribunal. And the United States shall furnish, without cost to the Yankton Indians, at least one competent attorney to represent the interests of the tribe before the court. If the Secretary of the Interior shall not within one year after ratification of this agreement by Congress refer the question of the ownership of the Pipestone Reservation to the Supreme Court, as provided for above, such failure upon his part shall be construed as and shall be a waiver by the United States of all rights to the ownership of the Pipestone Reservation, and the same shall thereafter be solely the property of the Yankton Tribe of the Sioux Indians, including the fee to the land.

VII.

In the execution of their agreement pursuant to the terms of the treaty of 1858 with the Yankton Sioux Indians, the United States caused so much of the pipestone quarry as appeared to be necessary and proper for the purpose of the reservation provided for to be surveyed and marked. A diagram and the field notes of the survey were duly returned, filed, and recorded in the General Land Office and in the office of the surveyor general of Minnesota. In February, 1860, copies of them were transmitted by the Commissioner of the General Land Office to the surveyor general of the United States for that State, with instructions to lay the same down on the map of the State in his office and to respect them when the public surveys reached the locality by closing their lines upon the reservation. At this time the land

included in the reservation was not surveyed; but afterwards, in July, 1872, after this survey the commissioner directed the surveyor general to locate the reservation on the official plat in his office from the field notes and plat of the original survey, and to transmit authenticated copies to the general and local land offices; or if it should be impossible to locate it from these data, to direct a resurvey of the tract, so that it might be located and described upon the official plats and its boundaries respected in accordance with the treaty. In pursuance of these instructions, the surveyor general caused a resurvey of the quarry reserved and immediately marked it upon the official plats in his office. Its boundaries as resurveyed correspond and are substantially coincident with the lines of the original survey and embrace the section of land above described.

VIII.

Prior to this treaty, and ever since the making of the treaty of 1858, the Yankton Sioux Indians have occupied and claimed this tract called the Pipestone Reservation for the purpose of quarrying stone thereon, and have at all times been in possession thereof and claimed the right not only to the possession, but also claimed the actual ownership of said land, and the whole thereof, and still do occupy and use said lands.

IX.

Mention should perhaps be made of the fact that on or about the year 1891 a railroad company ran its railroad across said Pipestone Reservation without the knowledge or consent of the Indians. Later, the Yankton Sioux Indians, having ascertained this fact, made demand upon the United States Government for the money received for said right of way, and the same was, May 2 to 9 in the year 1891, paid over to the Yankton Sioux Indians by the Government, thus recognizing their sole right to the possession, at least, if not the ownership, of these lands.

X.

By the treaty with the Yankton Sioux Indians, approved by act of Congress of date August 15, 1894 (28 Stat. L., 317), it was provided in Article XVI that—

If the Government of the United States questions the ownership of the Pipestone Reservation by the Yankton Tribe of Sioux Indians under the treaty of April 19, 1858, including the fee to the land as well as the right to work the quarries, the Secretary of the Interior shall as speedily as possible refer the matter to the Supreme Court of the United States, to be decided by that tribunal. And the United States shall furnish, without cost to the Yankton Indians, at least one competent attorney to represent the interest of the tribe before the court.

If the Secretary of the Interior shall not, within one year after the ratification of this agreement by Congress, refer the question of the ownership of the said Pipestone Reservation to the Supreme Court, as provided for above, such failure upon his part shall be construed as and shall be a waiver of the United States of all its rights to the ownership of the said Pipestone Reservation, and the same shall thereafter be solely the property of the Yankton Tribe of Sioux Indians, including the fee to the land.

The Government upon its part failed to submit said question to the Supreme Court of the United States or to take any action whatever to decide what right, if any, the United States had in said reservation. The Yankton Sioux Indians have at all times, as heretofore stated, claimed the absolute title to said Pipestone Reservation, and the treaty approved in 1894, above referred to, was made upon the express condition on the part of the Indians that this matter should be settled once for all.

XI.

The only other act of the United States in any way infringing upon the right of the Yankton Sioux Indians to the Pipestone Reservation was the building of an Indian school thereon, which was built and occupied without the knowledge or consent of the Yankton Sioux Indians,

except that by some accident or inadvertence one August Cluensen, on the 15th day of July, 1871, was permitted by the land officers of the district to locate scrip upon a quarter section of this land which was afterwards, on the 15th day of May, 1874, patented to the said Cluensen. This patent was set aside by decision of the Supreme Court of the United States in the case of *United States v. Herbert M. Carpenter*. Said decision is found in the 111 U. S. 347.

XII.

The treaty of 1894, as herein stated, was duly approved and ratified by Congress, and the Government took possession of the lands ceded by said treaty and has disposed of the same, thereby ratifying the provisions of the treaty of 1894.

XIII.

Congress has further ratified said treaty and recognized the validity of the same by entering into a contract with the Yankton Sioux Indians for a sale of said Pipestone Reservation and introducing a bill for the payment to the Indians of the sum of \$100,000 for said reservation. This act, however, was never ratified by Congress, nor any appropriation made for the payment of said \$100,000.

XIV.

From the foregoing facts it seems well established that the Government caused the public surveys to be extended over this region in 1872 and that the Commissioner of Indian Affairs, having again called the attention of the General Land Office to this subject, the lines to be surveyed were made to conform with the Pipestone Reservation boundary as already established. Copies of these surveys, with plats and field notes, were transmitted by the Commissioner of the General Land Office to the surveyor general of the United States of the State of Minnesota, with instructions to lay down the bound-

aries of the Pipestone Reservation on the map of the State; that in July, 1872, the commissioner directed the surveyor general to locate the reservation on the official plat in his office, from the field notes and plats of the original survey, and to transmit authenticated copies to the general and local offices, or if it should be impossible to locate the boundaries from these data, to direct the survey of the tract so that it might be located and described upon official plats, and its boundary respected in accordance with the treaty; that this location was held to be a valid location is shown by the case already referred to of *United States v. Carpenter*. (111 U. S., 347.)

That all the acts of the executive department of the offices of the United States in all departments and the courts have treated and considered the land in question as Yankton Indian Reservation. In confirmation of this is a report of Agent Foster of the Commissioner of Indian Affairs in 1890. (See Indian Office report, 1891, p. 427.)

That by an item in the Indian appropriation act approved July, 1891, authority was vested in the Secretary of the Interior to negotiate with the various Indian tribes for the surrender and sale of the surplus lands of their various reservations, and pursuant to that authority a representative of the Government was directed to enter into an agreement with the Yankton Indians for the cession of their surplus lands. The Yankton Indians, however, refused to enter into such negotiations until this disputed question of the title to the Pipestone Quarries should be first determined. The Interior Department, recognizing a valid claim on the part of the Yankton Indians, which it was as anxious as the Indians to have determined in some judicial manner and finally disposed of, authorized the provision which was inserted in the agreement or treaty, section 16, approved 1894.

Having made this agreement and placed the same in the treaty which was approved, and the United States

having neglected to provide a means by which the agreement could be made effectual, the Interior Department again sent its representative, under authority of Congress, and made another contract with the Indians in council for the settlement of the question and final disposition of the matters involved in this controversy.

By the terms of this agreement or contract a contract was entered into between the United States and the Yankton Indians on the 24 day of October, 1899, whereby the Government agreed that for the relinquishment by the Yankton Sioux Indians of their title to the property in question, and in consideration of its numerous agreements in the past, none of which have been carried out, it would pay to the Indians the sum of \$100,000.

Plaintiff therefore alleges that the Government can not with justice refuse to perform the obligation it has entered into and that it is and of right ought to be estopped from now claiming that it has any title or interest whatever in said lands.

Wherefore, in view of all the foregoing allegations in this petition, your petitioner respectfully shows, states, and charges that the plaintiff is entitled to have said reservation and the title thereto quieted in this plaintiff, and that the plaintiff has full capacity to institute and maintain this action under authority expressly granted by Congress for that purpose.

PRAYER FOR JUDGMENT.

In consideration of the premises your petitioner respectfully prays:

(1) Under and by virtue of the acts of Congress hereinbefore cited, and the treaties hereinbefore referred to, and the acts of the officers of the Government of the United States, that they have leave to file this their petition, verified by L. B. French as the attorney for said petitioners.

(2) That under and by virtue of said acts of Congress the United States be made a party defendant thereto and

that the court direct the issuance of its process for that purpose, and require the said defendant, the United States, to appear and answer to this petition, or otherwise defend, within 60 days from the date of its filing.

(3) That your petitioners have judgment in this court declaring that the actual title to said Pipestone Reservation is in the plaintiff and quieting their title thereto and to the whole thereof; and your petitioner also prays for general relief.

L. B. FRENCH,

*Attorney for the Plaintiff by Appointment of
the Honorable Secretary of the Interior.*

DISTRICT OF COLUMBIA, }
Washington, D. C. } ss:

L. B. French, being duly authorized thereto, appearing before me, the undersigned, states that he has carefully read and knows the contents and allegations of the foregoing petition, and that they are true to the best of his knowledge, information, and belief.

L. B. FRENCH.

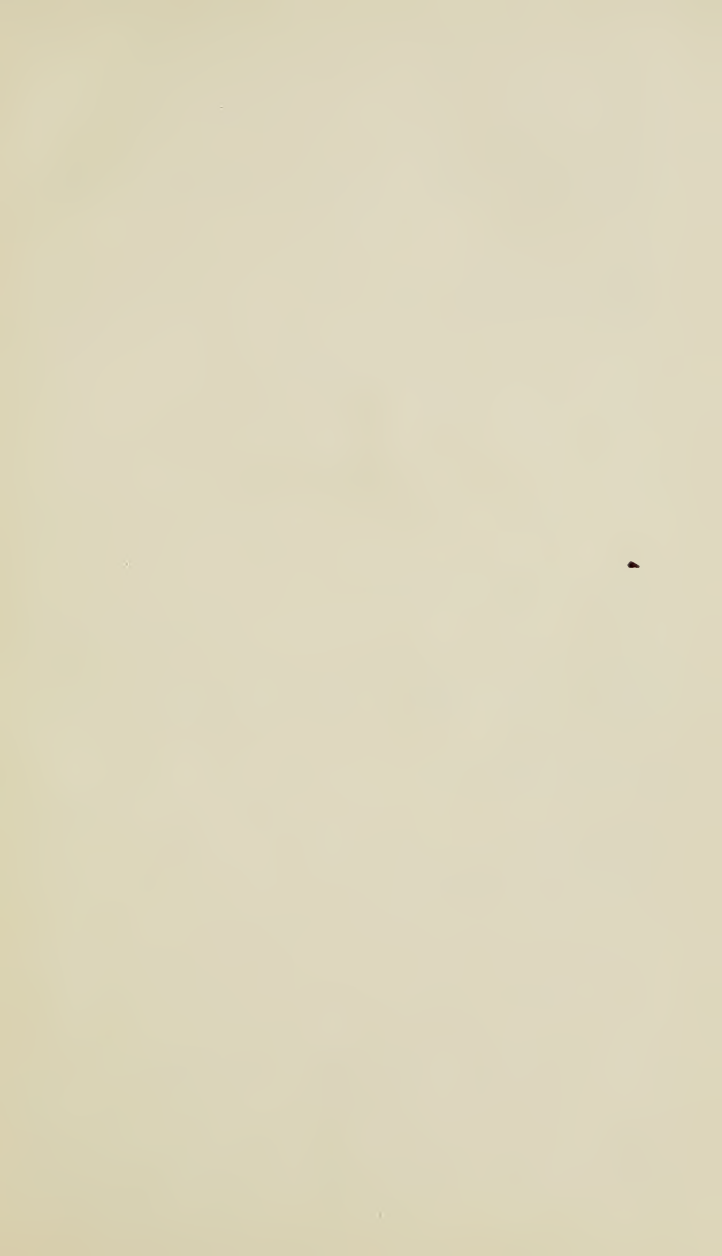
Subscribed and sworn to before me this 7th day of November, 1911.

[SEAL.]

JOHN RANDOLPH,

Assistant Clerk of the Court of Claims.





Court of Claims of the United States.

No. 31253.

YANKTON SIOUX INDIANS v. THE UNITED STATES.

EVIDENCE FOR DEFENDANTS.

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THE SECRETARY OF THE INTERIOR,
Washington, March 19, 1912.

THE ATTORNEY GENERAL.

SIR: I herewith transmit, for use in the case of the Yankton Sioux Indians *v.* The United States, No. 31253, Court of Claims, the report of Inspector James McLaughlin, of this department, dated March 15, 1912, upon the claim of said Indians as set out in the petition filed in said case.

Very respectfully,

SAMUEL ADAMS,
First Assistant Secretary.

Inclosure.

DEPARTMENT OF THE INTERIOR,
Washington, March 15, 1912.

Court of Claims.

YANKTON SIOUX INDIANS

vs.

THE UNITED STATES.

The honorable the SECRETARY OF THE INTERIOR.

SIR: Under instructions of the 28th ultimo, directing me to investigate and examine the claim of the *Yankton Sioux Indians vs. The United States*, No. 31253, Court of Claims, I have the honor to submit the following report:

This is a claim of the Yankton Sioux Indians for the actual title of what is familiarly known as the Pipestone quarry, or, technically,

the land lying in sections 1 and 2 of township 106 north, range 46 west, and sections 35 and 36 of township 107 north, range 46 west of the fifth principal meridian, containing 648.2 acres, more or less. More particularly it is a red claystone of fine grain, and when fresh quarried is so soft as to be readily carved even by the primitive tools of the aborigines. It was a favorite material of the Indians for pipes, and the pipe being used not only for smoking, but having an important place in ceremonial affairs, was, until recent years, much in demand. Geographically the quarry is about a mile and a half north of the present town of Pipestone, in the extreme southwest corner of Minnesota, about seven miles from the South Dakota line and thirty from the Iowa border.

When the Dakota tribe, or, as it subsequently became known, the Great Sioux Nation, moved from the headwaters of the Mississippi, it became scattered. The Yanktons took possession of the Missouri River country below old Fort Lookout, in the region of the Jacques, or James, and the Vermillion Rivers, down to where those streams empty into the Missouri; while the Sissetons and Wahpetons occupied the country east of the Yanktons from the sources of the St. Peters—or, as it is now called, the Minnesota—River, and Lake Traverse, down to the Calumet, or Bix Sioux. Here Lewis and Clarke found them in 1803, in the early days of the new Government of the United States; and Alexander Ramsey, governor and ex officio superintendent of Indian affairs of the Territory of Minnesota located them in the same position nearly fifty years later. (Indian Commissioner's Report, 1849, pp. 83 and 84.)

In 1851 a treaty was made at Traverse des Sioux, near the present town of St. Peters, Minnesota, by Commissioner Lea, of the Indian Office, and ex officio Superintendent Ramsey, of Minnesota, with the Sisseton and Wahpeton Dakota, or Sioux, Indians (10 Stat., 949), by which the said Indians sold and relinquished all their lands lying in Iowa;

“and also all their lands in the Territory of Minnesota lying east of the following line, to wit: Beginning at the junction of the Buffalo River with the Red River of the North; thence along the western bank of the Red River of the North to the mouth of the Sioux Wood River; thence along the Sioux Wood River to Lake Traverse; thence along the western shore of said lake to the southern extremity thereof; thence in a direct line to the junction of Kampeska Lake with the Tehan-kas-an-data, or Sioux River; thence along the western bank of said river to its point of intersection with northern line of the State of Iowa, including all the islands in said rivers and lake.

“The consideration for the cession by the Sissetons and Wahpetons was \$1,665,000, of which \$1,360,000 was to remain in trust with the United States at five per cent interest, to be paid annually for a period of fifty years.”

Out of this treaty sprang all of the contention that has arisen over the Pipestone quarry. Superintendent W. J. Cullen, of the northern superintendency, in his annual report to the Indian Office in 1857, said:

“The ‘Great Pipestone’ quarry, the Indian Mecca, which by the treaty of 1851 is within the limits of the ceded land seems to be the source of great misunderstanding among all these Indians, and

some provision should be made by the Government to reserve from sale or preemption this spot, which for generations they have held sacred for the purposes which the name indicates, and as the material is in universal use among them for manufacturing their pipes, they consider it more valuable than all the lands they possess." (Ind. Com. Rept., 1857, p. 52.)

Again, Kentzing Pritchett, who was appointed special agent on July 22, 1857, to visit Minnesota, in connection with the trouble growing out of the Spirit Lake affair, in his report of October 15, 1857, speaks incidentally of the strained relations between the Yanktons and Sissetons, and says:

"The sale of the Red Pipestone quarry is a fruitful source of discord among them, it always having been considered the common property of the whole nation, which no part of it had the right separately to dispose of." (Ind. Com'r Rept., 1857, p. 106.)

The Pipestone quarry is not mentioned in any of the Sioux treaties up to and including this time. The only reference to it I can find previously is in Superintendent Ramsey's annual report for 1849, in which he says, speaking of the Sissetons, or as he spells it, Si-si-ton-wan:

"This band claim the custody of the famous *wakan*, the Red Pipestone quarry, near the Côte des Prairies toward the River Jacques." (Ind. Com'r Rpt., 1849, p. 84.)

Soon after the treaty of 1851 reports of dissatisfaction among the Indians with regard to it began to come into the Indian Office, Superintendent Francis Hucheschmann, of the northern superintendency, reported in 1856:

"The Indians living further west—the Yanktoan Sioux—have as yet made no treaty with the United States and receive no annuity. They have sometimes visited at the payments of the Sissetons and Wahpetons and attempted to make disturbance by claiming that their country had extended to the Yellow Medicine River, and that consequently a part for the Sioux purchase belonged to them." (Ind. Com'r Rpt., 1856, p. 38.)

In 1857 Agent Chas. E. Flandreau, of the Sioux Agency (Yellow Medicine and Redwood), who was on the ground, reported the killing above the Yellow Medicine River of one of the sons of Ink-pa-du-tah, the leader in the Spirit Lake outrage, in an attempt to capture him and some of his associates, and then said—

"The affair created considerable excitement among the Indians, and being just at the time the Yanktons, Cut Heads, and other Indians from the plains made their annual visit to the agency to interrupt the payments and get what they can from the annuities, our Indians became unruly and evinced a decided sympathy for the man we had killed. * * *

"It will be absolutely necessary that some measure should be taken to prevent the Yanktons from interfering in the payment of the Sisseton and Wahpeton.

"The reason of their coming to these payments and the ground of their claim is as follows: When the treaty of Traverse des Sioux was made the Sissetons and Wahpetons were called upon to sell certain

lands, which they admitted did not belong to them, and declined selling, and were told that they were only to sell *their right* in the lands. This they consented to. These lands belonged to the Yanktons, or they had some claim on them, and the lands were regarded as ceded lands, and the Yanktons claim a right to share in the annuities, and every payment that has been made has been protracted and disturbed by the presence of these Indians." (Ind. Com'r Rpt., 1857, p. 59.)

While this agent speaks in several places in this extract of the disturbers as Yanktons, they were evidently a composite lot, for he describes them in the beginning as "Yanktons, Cut Heads, and other Indians of the plains." Now, the Cut Heads were of the Yanktonais, a fierce and warlike band which roamed the country north of the Yanktons on the "Plateau du Coteau du Missouri" of the maps of that day, and it is almost certain from their character and reputation that they were the principal complainants. That both bands were present in 1857 is evident from a letter of Superintendent Cullen to the Indian Office, written from the Lower Sioux Agency July 26, 1857, in which he says—

"On the 14th instant, on my return to the Yellow Medicine, I found all the upper Indians collected together, all who were known as annuity Indians, numbering nearly 5,000, with something like 100 Yancton lodges and 100 Yanctonais." (Ind. Com. Rpt., 1857, p. 80.)

Again, in his annual report for the same year, Superintendent Cullen, in speaking of the Yanktonai Sioux, says—

"These Indians are the ones who interfere annually with the payments at the Upper Sioux Agency, under the pretense of the claim they make, before referred to, against the Sissetons, * * *. They number 450 lodges, besides about 200 lodges of what are known as the Cut Head Yanctonai, and cover a vast extent of country and the valley of several large streams." (Ind. Com. Rpt., 1857, p. 52.)

While the superintendent uses only the name Yanctonai in this report, it is probable, from his description of them and the country they occupied, that he referred to all of the bands west of the Sioux reserve—Yanctons and Yanctonais alike.

The following year, in 1858, Agent J. R. Brown, the successor of Agent Flandreau, who had been appointed United States district judge in the summer of 1857 (Ind. Comr. Rpt., 1857, p. 48), in speaking of these annual visitors, spoke of them solely as Yanktonais. They became so troublesome that Indian Commissioner Mix noticed them in his annual report for 1858, and said that the Yanktonais had materially interfered with the Sissetons and Wahpetons, and were so vengeful and hostile that he had thought it advisable to send a special agent, with presents, to investigate and council with that band, which was done in the summer of 1858, this special agent, Kentzing Pritchette, the same as was sent out the year before on the Spirit Lake affair, being absent on this service from June until October. As this has no bearing on the present case, except to show that the Yanktons were not the only claimants, it is not necessary to pursue it further.

From the evidence which I have quoted I think it is clear that the Yanktons in the beginning, as well as the others, objected to the

Sisseton and Wahpeton cession, and probably were among the annual visitors to the Sisseton payments up to 1857. After that they dropped out and were no party to further disturbances. That was left to the Yanktonais alone. The reason of this is obvious. In the spring of 1858 sixteen representatives of the Yankton band were delegated to go on a peaceful mission to Washington, where, on April 19, 1858, a treaty was made with them (11 Stats. L., 743), by which all cause of complaint was removed.

By this treaty the Yanktons ceded and relinquished, for \$1,650,000, payable in fifty years, all the lands owned, possessed, or claimed by them wherever situated, except 400,000 acres on the Missouri River, which was reserved for themselves. The land thus ceded was a large tract in the southeast corner of what is now South Dakota, and its boundaries are not left to guesswork, but are very clearly defined, the eastern line being from Lake Kampeska "down the Big Sioux River to its junction with the Missouri." The islands in the Missouri from the Medicine Knoll to the Big Sioux were also ceded.

As going to show the country which the Yanktons and their neighbors on the east, the Santees, loosely held at different times and had some right of occupancy, it is noted that certain allowances which were to be furnished under the treaty of July 15, 1830 (7 Stats. L., 328), for ten years, or during the pleasure of the President, were distributed to them until 1850 on the Missouri River, the Yanktons receiving theirs at Fort Lookout and the Santees theirs at Fort Vermillion. (Ind. Comr. Rpt., 1849, p. 134.)

From this it would appear that the Santees had certain rights as far as the Missouri River, while I have been unable to find anything to show that the Yanktons ever occupied any country east of the Big Sioux. "Santee" is but another name for the Medawakanton, Wahpekoota, Sisseton, and Wahpeton Bands of Sioux, or the Sioux of the Mississippi, and being short and east of pronunciation was often used in place of the longer name. It is so used in another place in this report (p. 13).

The Yankton treaty of 1858 is clear and comprehensive and was evidently well considered. In article 2 the Indians asserted that all lands "embraced in said limits" were their own and they had "full and exclusive right to cede and relinquish the same to the United States."

The inference is irresistible that if the Yanktons owned or claimed anything outside of "said limits" they would have mentioned it. Nothing, however, outside of the described cession was mentioned, but in article 8 of the treaty the following occurs:

"The said Yankton Indians shall be secured in the free and unrestricted use of the red pipestone quarry, or so much as they have been accustomed to frequent and use for the purpose of procuring stone for pipes; and the United States hereby stipulate and agree to cause to be surveyed and marked so much thereof as shall be necessary and proper for that purpose, and retain the same and keep it open and free to the Indians to visit and procure stone for pipe so long as they desire."

The treaty further provided for the manner of payment, the care of the sick, the purchase of stock, the establishment of schools, and evidently covers all points raised at the time.

In presenting the treaty to the department for transmission to Congress, Commissioner Mix said:

"By the stipulations of this agreement not only the above-mentioned lands are obtained, but their (the Indians) complaints are silenced against the Government for having purchased without their consent in 1857 (1851?) lands of the four bands of Sioux in Minnesota in which they allege they had an interest." (Ind. Office Report, Book 10, p. 476.)

While the complaint was in general terms that the Government had purchased the Sisseton lands without the Yankton's consent, yet their real grievance was not so much that they had not been consulted; but that they were apparently deprived of the use of a quarry to which for generations they had been accustomed. By this treaty this question was effectually settled, and evidently finally, so far as the Yanktons were concerned, by securing to them the right of way to get stone from the quarry for their pipes as long as they might desire. It must be assumed that this was a satisfactory settlement of the question to the Yanktons, for they accepted it; and having done so, they were estopped from setting up any further claim in the premises.

That article 8, providing for the survey of the quarry, was carried out would appear from the report of Agent A. H. Redfield to the superintendent of the central superintendency in October, 1859, viz:

"The celebrated red pipestone quarry, a portion of which was reserved by the Yanktons in their treaty, has been surveyed and marked by Messrs. Hutton and Snow the past summer." (Ind. Com. Rpt., 1859, p. 128.)

Things went on in this way some thirteen years, when in 1871 the Indian Office permitted a settler to locate on the pipestone land surveyed and reserved from entry, and issued a patent therefor in 1874. The case being brought to the Supreme Court the patent was held to be invalid.

Fourteen years later, or thirty years after the treaty of 1858, when a new generation had arisen, a bill (H. R. 10544) appeared in Congress, and on August 8, 1888, the House Committee on Indian Affairs made a report thereon. The bill itself is not before me, but from the report, which I have seen, it appears that the bill was "for the disposition of the agricultural lands embraced within the limits of the Pipestone Indian Reservation in Minnesota." It provided for the sale of this land and that the act should take effect only upon the consent of a majority of the adult Yankton Sioux. The Indian Office, being called upon for a report, suggested certain changes in the verbiage in a letter of July 3, 1888, not referring to the quarry as such, and offered a substitute in accordance with its views. The committee adopted the substitute and recommended its passage. (H. R. Report No. 3228, 50th Cong., 1st sess.) Nothing further, however, appears to have been done with it.

Six years after this the matter came again to the surface, this time incidentally. In 1894 the department transmitted to Congress a letter of the Indian Office dated December 9, 1893, accompanied by the report of the Yankton Indian Commission, an agreement made with those Indians on December 31, 1892, for the sale of their sur-

plus land. (Sen. Ex. Doc. No. 27, 53d Cong., 2d sess.) In its report to the Indian Office March 31, 1893, the commission said (p. 15):

"By the treaty of 1858, the Yankton Indians ceded to the United States their claim to all lands excepting their home reservation of 400,000 acres and the Red Pipestone quarry."

As to this I would remark that this statement is inaccurate and misleading. Articles 1 and 2 of the treaty of 1858, making the cession, make no reference to the quarry at all, either directly or indirectly. The "Home Reservation" is excepted, it is true, but not the quarry. It is not until article 8 that any mention is made of that, and then only to give the Yanktons the right of way or, according to high authority, an easement to get the pipestone.

The commission further reported (p. 24) that "the Red Pipestone quarry was made a *sine qua non* of the treaty of 1858," and that Chief Struck by the Ree would not sign "until this was assured him." Whatever "this" may mean, I can find nothing in the official records here to show that this incident occurred. The commission evidently got its impression from speeches made by the Indians at the council proceeding, especially that of Henry Selwyn. He is reported as saying:

"I want to speak of the Pipestone Reservation. By the treaty of 1858 (?) it seems that the present Pipestone Reservation was sold the Government by the Santees. Before the Santees made the sale we owned the Pipestone quarry, and the Santees virtually stole and sold it. When the commission was sent out to negotiate in 1858, Struck by the Ree refused to sell the land until the Pipestone quarry was returned to the Yankton Tribe. When the Government promised to give this back to the Yanktons, Struck by the Ree then signed the treaty. So the basis on which the treaty of 1858 was made was the return of the Pipestone quarry. The United States bought back this land and gave it back to the Yanktons." (P. 55.)

The speaker was a full-blood Indian, or nearly so, a Presbyterian clergyman, and to my own personal knowledge a most excellent man; but he was evidently speaking from hearsay, and not from his own personal knowledge, as he was not old enough in 1858 to understand what was going on, and evidently got things twisted. While, as I have said, I can find no record of the Struck by the Ree incident here, it is not improbable that something like it might have occurred, for it is certain that the quarry matter was discussed and article 8 of the treaty was the outcome. Whatever the attitude of Struck by the Ree might have been in the beginning of the negotiations, he must have been satisfied at the end; he evidently got what he wanted, for he signed the treaty. In this connection I deem it proper to say that there could hardly have been a misunderstanding as to the meaning of the treaty with regard to the quarry, as has been intimated, as the interpreters, Zephyr Roncontre and Chas. F. Picotte, the latter signing as the representative of three of the authorized delegation, were singularly well qualified for their work and had the entire confidence of the Indians. Both were granted by the treaty a section of land apiece for valuable service and liberality to the Yanktons. As Henry Selwyn, in his speech, refers to the Santees, I have explained before (p. 9) that they were the Medawakanton, Wahpe-

koota, Sisseton, and Wahpeton bands of Sioux. In this instance Selwyn refers particularly to the two latter.

The commissioners were evidently impressed, but realizing that the question of absolute ownership which had arisen was one for the courts to decide, allowed Article XVI of the new agreement to be inserted, providing that if the Government questioned the ownership to this Pipestone Reservation by the Yankton Band it should as speedily as possible refer the matter to the Supreme Court for decision. If it failed to do so within a year after the ratification of the agreement the reservation should be the sole property of the Yanktons. The agreement was ratified by act of August 15, 1894. (28 Stat. L., 314.)

The case was not submitted to the Supreme Court for the reason, as the Department of Justice advised, that it was impracticable to do so.

The Indian appropriation act of June 7, 1897, contained the following clause (30 Stat. L., 87):

“The Secretary of the Interior is directed to negotiate, through an Indian inspector, with the Yankton Tribe of Indians of South Dakota, for the purchase of a parcel of land near Pipestone, Minn., on which is now located an Indian industrial school.”

The Indian school referred to was established on the reservation under section 2 of the act of February 16, 1891 (26 Stat. L., 764). It should be remarked that the Yanktons applied for compensation for this appropriation of their land but the Assistant Attorney General on September 17, 1891, rendered an opinion that the Indians were not entitled to such compensation, for the reason that their rights to quarry stone were not infringed upon and that they would not suffer any damage from the construction of the school buildings. (Ind. Com. Rpt., 1892, p. 60.)

Under the act of 1897, just referred to, I was directed to negotiate with the Indians, which I did, and reported from Yankton Agency, South Dakota, October 9, 1899, transmitting an agreement and the proceedings of council. The Indians had extravagant notions and first wanted \$3,000,000 for the reservation of 648.2 acres, then \$1,000,000, but finally came down to \$100,000, at which figure I eventually made the agreement. This agreement was transmitted to Congress by the department March 24, 1900. My report, the agreement, and council proceedings are given in full in H. R. Doc. No. 535, 55th Cong., 1st sess.

Three years later, on March 3, 1893, Senator Quarles, from the Senate Committee on Indian Affairs, submitted an adverse report on the bill to ratify the agreement (S. 1472). The committee quoted article 8 of the treaty of April 19, 1858, and said that the only title the Yanktons had was in the nature of an easement; and, referring to the failure to submit the question of title to the Supreme Court, also said that such a course was a legal and a practical impossibility, it having no original jurisdiction. Senator Gamble, for himself and two others, submitted a minority report arguing in favor of the Yankton's contention and expressing the opinion that the agreement should be ratified (Sen. Rpt. No. 3316, 57th Cong., 2d sess). No action appears to have been taken on the bill.

After an interval of three years, on April 4, 1906, Senator Gamble, from the Senate Committee on Indian Affairs, made another report on a bill (S. 2993) to ratify the Yankton agreement, this time favorable, recommending that it do pass. (Sen. Rpt. No. 2369, 59th Cong., 1st sess.)

One of the reasons offered by the committee in favor of the Yanktons was an extract from a report of Chas. E. Flandreau, agent for the Sioux (meaning the Sissetons and Wahpetons) to the Commissioner of Indian Affairs in 1857, i. e.—

“The Yanktons claim a right to share in the annuities and every payment that has been made has been protested and disturbed by the presence of these Indians.”

This is only a partial quotation; the rest of it would qualify the meaning materially. I would refer to page 5 of this report for the full text, which shows that other Indians were interested as well as the Yanktons, and were present at the payments. If, therefore, the presence of the Yanktons is any proof of the justice of their claim, the presence of the “Cut Heads (Yanktonais) and other Indians from the plains” should show that *they* had an equal title. I would note that “protested” in next to the last line of the committee’s quotation is “protracted” in the original.

Upon a careful review of the case in the light of the foregoing, and of my own personal knowledge, I am fully convinced that the opinion I have long entertained is correct, i. e., that the Yanktons have not, and never had, the exclusive title to the Pipestone quarry. Governor Ramsey’s assertion in 1849, which I have quoted on page 4, than whom there is no better authority, that the Sissetons claimed its custody would be sufficient proof in itself; but the treaty of 1858, which gave the Yanktons an easement to get stone for pipes and nothing more, taken with the statement of Commissioner Mix, that by that treaty complaints of the Indians were silenced, would be conclusive if there were any doubt remaining.

The Yanktons were not the only Indians, nor the principal ones, who objected to the ceding of the Sisseton and Wahpeton lands without their consent. Certainly they did not do so after the Sisseton payment of 1857, for in the spring of 1858 they ceded their own land without the consent of the other Sioux bands. The Yanktonais resented this as vehemently as they did the Sisseton and Wahpeton cession, and besought their agent, A. H. Redfield, at Fort Union, in September, 1858, to write their Great Father to stop the treaty (Ind. Com. Rpt., 1858, p. 85). The Yanktonais were the hardest and most persistent of the “kickers,” and they continued their opposition as late as 1861, or until the terrible affair of New Ulm in 1862, which changed the whole aspect of affairs with respect to the four bands of Santee Sioux; their treaties were abrogated, their payments were stopped, and the Indians themselves were driven from their ancient habitations. The Yanktonais were a proud and haughty people and rejected all overtures to placate them (Ind. Com’r. Rpt., 1861, p. 72). The Yanktons, on the other hand, who by reason of their environment and necessities had grown to be a peaceable and an orderly people, were friendly to the Government and not given to obstruction, certainly not after their treaty of 1858.

As to the price fixed in the agreement I made with the Yanktons in 1899, I thought it was excessive then and I think so still; but as it was the best terms I could make, and as in my instructions, the department spoke of the "Red Pipestone" as famous in song and story, and the advisability of preserving it as a national park, or reservation, I assumed that there was more than the actual market value to be considered, and concluded it best to close the agreement as I did.

The value placed upon the reservation by the Indians is almost wholly sentimental and has sprung up of late years. Beyond the area of tillable land in the tract there is nothing about it of any particular utility in the commercial world. In offering \$100 an acre for it, as I did at first, I considered that I was going to, if not beyond, the just point of liberality. In the earlier days a large number of Indians of the Sioux Tribe visited the quarry to get the pipestone; but in later years conditions have changed; tribes are rapidly disintegrating; tribal ceremonies are dying out, or becoming civilized, and there is no longer the demand for the pipestone there formerly was. The Indians no longer need it, and the white man treats it principally, if not altogether, as a curio. If it be decided that there is anything due for the Indian title, and I do not think there is, it should not exceed \$100 an acre.

As a difference as to the ownership of the property may be observed between this report and mine of October 9, 1899, I would have it clearly understood that in conducting the negotiations of that year I was but the mouthpiece of the department, reflecting *its* views without regard to my own. In my instructions from Assistant Secretary Ryan of May 23, 1898, he quoted the act of Congress already referred to, gave a history of the case, and directed me to convene a council of the Yanktons and procure from *them* a cession of a part, if not the whole, of the Pipestone Reservation; while Commissioner Browning, March 6, 1897, had written a letter to Hon. R. J. Gamble, then in the House of Representatives, which was exhibited to me at the negotiations and very much in evidence; in which, after quoting article 8 of the treaty of 1858, he wrote:

"Whatever rights were secured under this article of the treaty were vested in the Yankton Indians, and in the Yanktons alone. The recent agreement with the Yankton Indians did not alter the status of the Pipestone Reservation in this respect, whatever effect it may have had upon the rights of the United States and the Yankton Indians, and in the opinion of this office no Indians other than the Yankton Sioux have any legitimate claim to such reservation."

In the light of these documents I negotiated, with some difficulty, the agreement referred to, recognizing the Yanktons as the sole owners of the Pipestone Reservation.

It has developed during this investigation that another opinion on this subject was expressed by the Indian Office over three years before the one just quoted. In submitting the agreement of the Yankton Commission to the Secretary of the Interior on December 9, 1893, the acting commissioner had said:

"Although the title of these Indians in this reservation has not been regarded as fee simple, their rights to control and retain it as long as they may desire has been fully recognized." (Ind. O. letter, Bk. L, 135 pt. 1, p. 446.)

But of this letter of December 9, 1893, I was not aware at the time of my negotiations with the Yanktons. I do not know that it would have made any difference, for department instructions were paramount, and under them I was to obtain the cession if I could. I quote the letter now to show that there was a diversity of opinion in regard to the quarry, even in the Indian Office.

While I was but carrying out the department ideas, my own personal opinion at the time, without having gone very deeply into the subject, was contrary to that expressed in the letters just quoted. I did not think that the Yanktons alone had rights in this quarry, and so I tried to get them to recognize the other Sioux, advising them that other bands besides themselves were claimants, notably the Yanktonais of Crow Creek Agency, and the Sissetons and Wahpetons.

In this connection I submit that a delegation of four Sissetons and Wahpetons of the Devils Lake Agency, North Dakota, recently in Washington on business for their reservation, spoke to me about the Pipestone quarry. They admitted that this quarry was within their cession of 1851 and contended that it was formerly the property of the Sisseton and Wahpeton bands, but frequented by all the bands of Sioux residing east of the Missouri River; that for a long time they had supposed the quarry was reserved to them by the treaty, but subsequently learned that the cession embraced the quarry.

The truth is that *all* of the Sioux bands claimed, and have had from time immemorial, an equal right to use this Pipestone quarry. I assert this with entire confidence, both from the official record and my own personal knowledge derived from forty-nine years acquaintance with the Sioux, forty of which has been continuous service among the Indians, twenty-four of the forty years being spent with the Sioux of the plains and those of the Mississippi. All the older members of the Sioux tribe will testify to the correctness of this view.

To sum up, my deliberate conclusion is that whatever rights the Indians still may have to the Pipestone Reservation belongs to the whole Sioux Nation, at least to those who reside or formerly resided east of the Missouri River, and not to a single band; and that if anything is due to extinguish the Indian title thereto, the Yanktons are entitled to their pro rata share and no more.

In giving the Indian names I have followed, as a rule, the modern spelling; and I have attached four sketch maps showing the situation with respect to the Pipestone quarry, the location of the different Sioux bands, and the cessions of 1851 and 1858.

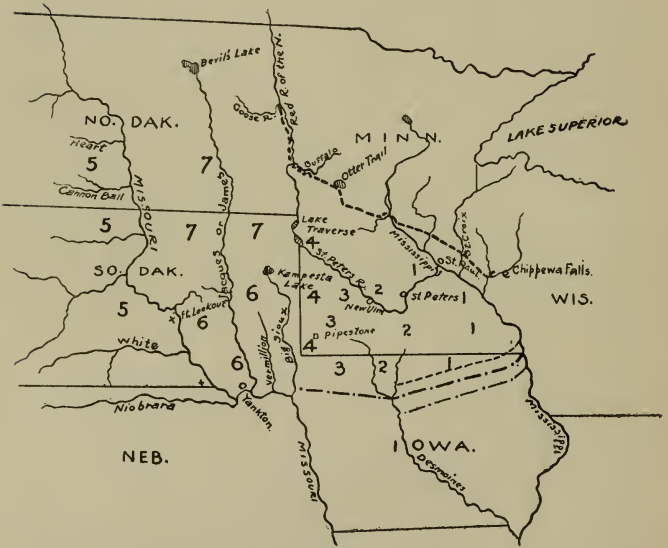
Very respectfully, your obedient servant,

JAMES McLAUGHLIN,
Inspector.

No. 1.

MAP SHOWING LOCATION OF SIOUX BANDS
IN 1849 AND BEFORE.

(COMR'S REPORT 1849, P. 77.-86.)
1857. P. 70.



- | | |
|-----------------|---------------|
| 1- MEDAWAKANTON | 5- TETON |
| 2- WAPAKOOTA | 6- YANKTON |
| 3- WAHPETON | 7- YANKTONAI. |
| 4- SISSETON | |

----- CHIPPEWA & SIOUX BOUNDARY } TREATY 1830.
..... SAC & FOX & SIOUX BOUNDARY }

MORSE'S MAP OF MINNESOTA TERRITORY 1856
WITH CESSIONS OF 1851 AND 1858 SHOWN ON IT



— TREATY	1851 -	SISSETON & WAHPETON
— " —	1858 -	YANKTON

No. 3.

MAP OF MINNESOTA. 1911
WHAT WAS THE TERRITORY UNTIL 1858.
SHOWING CESSION'S.



No. 4.

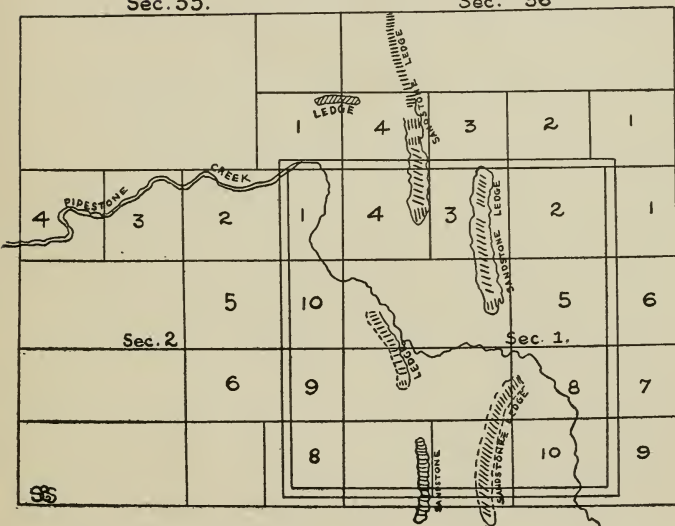
PLAT OF PIPESTONE QUARRY
RESERVATION, MINN.

AFTER SURVEYOR GENERAL, ST. PAUL 1899.
TAKEN FROM H.R. DOC, NO 535, 56 CONG. 1ST. Sess.

T.107 N. R.46 W.

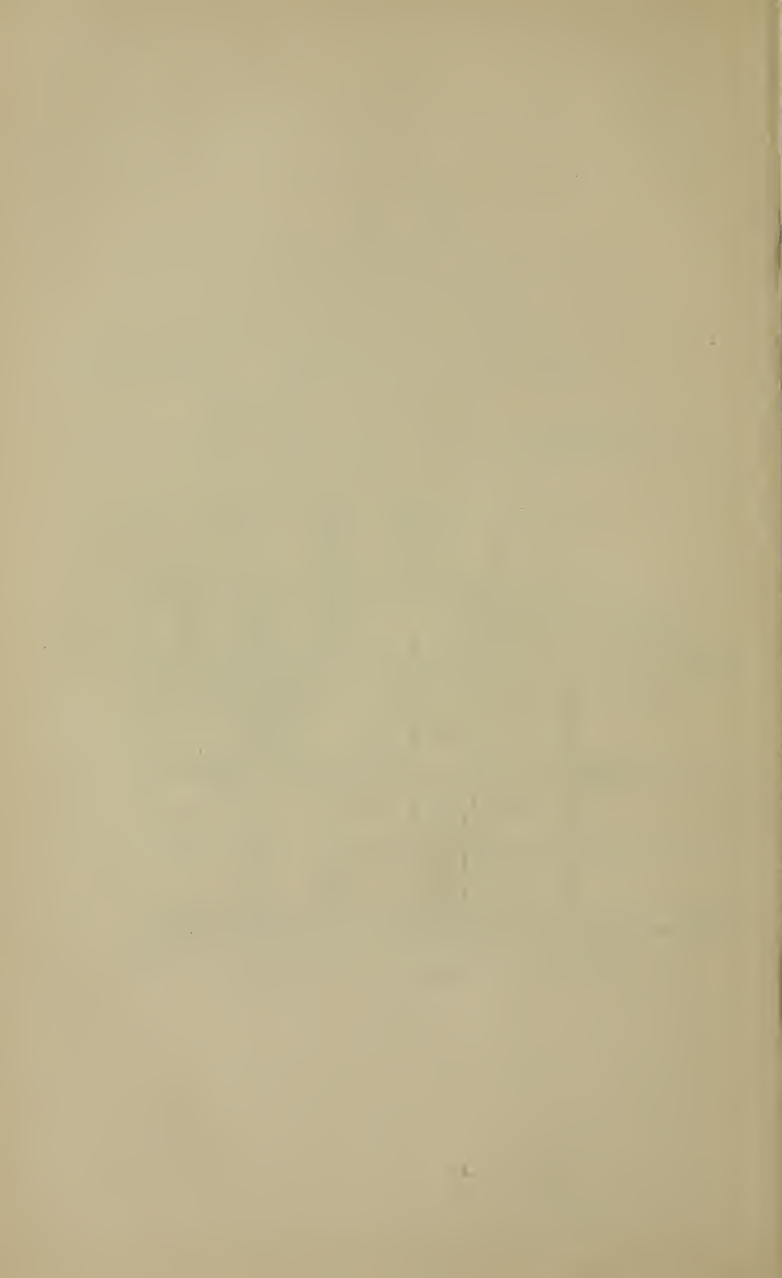
Sec.35.

Sec. 36



T.106 N. R.46 W.

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Court of Claims of the United States.

No. 31253.

THE YANKTON SIOUX INDIANS vs. THE UNITED STATES.

EVIDENCE FOR DEFENDANTS.

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The deposition of Eli Abraham, for defendants, taken at Springfield, S. Dak., on the 13th day of July, A. D. 1915.

Claimant's counsel, L. B. French; defendants' counsel, George M. Anderson.

ELI ABRAHAM, having been produced as a witness on behalf of the defendants, was by me sworn, before any question was put to him, to tell the truth, the whole truth, and nothing but the truth relative to the said cause; and thereupon deposed and said, through E. C. Cambell, an interpreter duly sworn by me to truly and faithfully interpret all questions propounded to said witness and the answers given by said witness thereto, that his name is Eli Abraham; that his occupation is that of a farmer; that he is 66 years of age; that his residence is the Santee Agency, Knox County, Nebr.; that he has no interest, direct or indirect, in the claim which is the subject of inquiry in said cause; that he is not a relative to the claimants. And thereupon the said Eli Abraham was examined by the counsel for the said defendants, and in answer to interrogations testified as follows:

1. Question. To what tribe and band of Indians do you belong?
Answer. To the Medewkanton Band of Sioux Indians—tribe.

2. Question. State if you know what was the western line of the four bands of Minnesota Sioux before the treaties of Traverse des Sioux and Mendota in 1851, according to the history and traditions of the band to which you belong?

The question is objected to for the reason—First, that it is immaterial and irrelevant; second, that since the above named a treaty or treaties has been made between the Yankton Indians and the Government of the United States, and that so far as the Government is concerned and also the Indians they are bound by this treaty, or treaties, and they being in writing and signed by the United States, as well as the Indians, are a part of the records in files of the Indian Office and are the best evidence; third, this being so, both the Indians and the United States are stopped of showing any other or different boundaries at this late date, and if it is proposed to show anything different it will be incompetent evidence. It is agreed by counsel for both parties that these objections shall apply, and need not be repeated, to all subsequent questions put to this and other witnesses.

Answer. We had no surveys or section lines, but used natural objects for boundaries, such as streams and rivers. The western boundary was the Crooked River, now known as the Sioux River.

3. Question. From whom did you yourself get this information as to the western line of the lands of the Minnesota Sioux? Whom did you hear talk about it? What old people, if any?

Answer. I always heard the old people talking about it.

The said witness was then cross-examined by the counsel for the claimants and, in answer to interrogatories, testified as follows:

1. Cross-question. When was it that you heard these old people talking about this?

Answer. Before 1862, when we were living in Minnesota.

2. Cross-question. Near what place did you live in Minnesota at the time you heard these people talking about this?

Answer. At a place called Redwood, Minn.

3. Cross-question. Can you give the name or names of any old people that you heard talking about this?

Answer. Yes.

3a. Cross-question. Who were they?

Answer. Some were chiefs and some were men of the tribe.

4. Cross-question. How long did you live at Redwood after the time you heard them talking about this?

Answer. About five or six years, and then I left there. That was before 1862.

5. Cross-question. Where did you go from Redwood?

Answer. Down the Mississippi and up the Missouri to Crow Creek.

6. Cross-question. All that you knew about this was what you heard the old men talking?

Answer. Yes; afterwards I read from the histories and treaties, and I knew it was true.

7. Cross-question.

Redirect:

Question. When did you go away from Redwood, Minn?

Answer. In 1863.

Question. Why did you leave Redwood?

Answer. Our parents got into trouble, and the Government took us there; we did not go of our own free will.

Recross by Mr. FRENCH:

Question. How old were you at that time—I mean at the time you were taken away from Redwood?

Answer. I was 14 years of age.

Final question. Do you know any other matter relative to the claim in question?

Answer. That is all I know.

Deposition of Napoleon Wabashaw, for defendants, taken at Springfield, S. Dak., on the 13th day of July, A. D. 1915.

Claimant's counsel, L. B. French; defendants' counsel, George M. Anderson.

At the same place and on the same day, in the presence of the same counsel of both parties, NAPOLEON WABASHAW, a witness on behalf of the defendants, was produced, and, having been by me in like manner sworn, deposed and said that his name is Napoleon Wabashaw; that his occupation is that of a farmer; that he is 63 years of age; that his place of residence is Santee Agency, Nebr.; that he has no interest, direct or indirect, in this claim; and that he is not related to the claimants. And thereupon the said Napoleon Wabashaw was examined by the counsel for the defendants, and, in answer to interrogatories, testified as follows:

1. Question. To what band and tribe do you belong?

Answer. To the Medewakanton Sioux Band of the Sioux Tribe.

2. Question. State, if you know, what was the western boundary or line of the Minnesota Sioux prior to the treaties of Traverse de Sioux and Mendota of 1851, as learned from the history and traditions prevailing among the Minnesota Annuity Sioux?

Answer. Yes, I know from what I have heard.

3. Question. State then, where it was?

Answer. From what I have heard it was on this side of the Minnesota line.

4. Question. Do you mean on the west side?

Answer. Yes.

5. Question. What was the natural boundary, as known by the Indians of the band to which you belong on the west of your lands, if any?

Answer. Before it was surveyed the western line was the Crooked or Sioux River, the Indian name of which was Tchan-kas-an-duta.

6. Question. You have stated that you learned of the western boundary from hearing it discussed. By whom did you hear it spoken of?

Answer. This was told to me by my father, Chief Wabashaw, who said that they came up hunting as far as the Crooked or Sioux River, and that that was the boundary.

7. Question. How old were you when he first told you about this?

Answer. I think I was about 10 years of age.

8. Question. How old were you when you first went to the Crooked River?

Answer. My father went there hunting, and I and my brother went with him. I was then about 10 years old.

9. Question. How long has your father been dead?

Answer. He died in April, 1878.

10. Question. What other men did you hear discuss this boundary line?

Answer. Another old man by the name of Iron Elk, who died on the Santee Reservation not long ago, always told us that the Crooked River was our western boundary, but that when the line was surveyed it was crowded east.

11. Question. Was or was not this subject frequently discussed among the Indians of your band?

Answer. These things are not generally discussed among the members of the tribe, but the old people when they were getting old and weak would tell us to remember these things.

12. Question. When, if at all, did you leave Redwood, Minn.?

Answer. In 1863.

13. Question. Where did you go from Redwood?

Answer. I went to Crow Creek.

14. Question. Were you taken there by the Government or did you go of your own accord.

Answer. I was taken by the Government in a steamboat.

Cross-examination by Mr. FRENCH:

1. Question. When you went to the Crooked River with your father where did you live?

Answer. We lived in tepees.

2. Question. At what place was the tribe located at the time you went to the Crooked River with your father.

Answer. At Redwood, Minn.

3. Question. Was that before or after the time that the Government took you away from Redwood?

Answer. At the time I and my father went to the Crooked River was about 1860.

Final Question. Do you know any other matter relative to the claim in question? If so state it.

Answer. That is about all I know.

Deposition of Thomas Whipple, for defendants, taken at Springfield, S. Dak., on the 13th day of July, A. D. 1915.

Claimant's counsel, L. B. French; defendants' counsel, George M. Anderson.

At the same place on the same day, in the presence of the same counsel for both parties, THOMAS WHIPPLE, a witness on behalf of the defendants, was produced, and, having been by me in like manner sworn, deposed and said that his name is Thomas Whipple; that his occupation is that of a farmer; that he is 69 years of age; that his place of residence is Eggleston, Minn.; that he has no interest direct or indirect in the claim which is subject of inquiry in said cause; and that he is not related to the claimants. And thereupon the said Thomas Whipple was examined by the counsel for the defendants, and, in answer to interrogatories, testified as follows:

1. Question. Do you know from the tradition and history prevailing in the tribe and band of which you are a member what the western boundaries of the Minnesota Sioux were before the treaties of Traverse de Sioux and Mendota of 1851?

Answer. Before the treaty of Mendota, I was quite a large boy and remembered quite a good deal, that the Medewakanton and Wapekuta Bands lived in Minnesota, and when we wanted any provisions we went as far as the Crooked River or the Sioux River for game, and we carried the furs back to "Long Trader," meaning Gen. H. H. Sibley.

2. Question. To what band and tribe do you belong?

Answer. Wahpakuta Band of Sioux.

3. Question. What did you learn from the talk of the old men, if anything, as to what was the western line or boundary of the land of the Minnesota Sioux before the treaty of Mendota?

Answer. The Indians always claimed as far as the Crooked or Sioux River.

4. Question. Do you mean the bands to which you belong claimed to the Crooked River?

Answer. Yes.

5. Question. Whom did you hear—what Indians did you hear say the Crooked River was the western boundary of the Minnesota Sioux?

Answer. My grandfathers and my own parents.

6. Question. Where were you living when they told you that?

Answer. At Faribault, Minn.

7. Question. When was that—I mean when was it that your grandparents and your parents told you that the Crooked River was the western line or boundary of the Minnesota Sioux?

Answer. When I was old enough to remember my grandparents and parents told me that the Crooked River was the western boundary. After the line was surveyed we were brought east of the Minnesota line.

8. Question. How long was it that they told you this before the great trouble in 1862?

Answer. This was told to me before the massacre of 1862.

9. Question. Where were you living at the time of the massacre of 1862?

Answer. I was in Redwood, Minn.

10. Question. Who was the chief of the band to which you belonged?

Answer. Husasa, meaning Redlegs.

11. Question. Were you any relation of Redlegs?

Answer. Redlegs and my father were brothers.

12. Question. When did you leave Redwood?

Answer. I was about 17 years of age when the massacre started in 1862, and Gen. Sibley took us as prisoners across the river.

13. Question. You mean Gen. Sibley and his troops, don't you?

Answer. There were no soldiers: the officers took me.

14. Question. Did you ever hunt, yourself, as far as the Crooked River?

Answer. Yes.

15. Question. What towns are on the Crooked River now that you know?

Answer. Flandreau and Pipestone.

16. Question. On what river, if you know, is Sioux Falls?

Answer. On the west bank of the Crooked River.

Cross-examination waived.

Final question. Do you know any other matter relative to the claim in question? If so, state it.

Answer. As far as I know my father, Tasadia, meaning "Walking Cane," was buried at the Indian Presbyterian Church at Flandreau, and they said that was on the boundary.

Deposition of Thomas K. West, for defendants, taken at Flandreau, S. Dak., on the 16th day of July, A. D. 1915.

Claimants' counsel, L. B. French; defendants' counsel, George M. Anderson.

THOMAS K. WEST, having been produced as a witness on behalf of the defendants, was by me sworn, before any question was put to him, to tell the truth, the whole truth, and nothing but the truth relative to the said cause; and thereupon deposed and said, through James A. Robb, an interpreter duly sworn by me to truly and faithfully interpret all questions propounded to said witness and the answers given by said witness thereto, that his name is Thomas K. West; that his occupation is that of a farmer; that he is 76 years of age; that his residence is near Flandreau, Moody County, S. Dak.; that he has no interest, direct or indirect, in the claim which is the subject of inquiry in said cause; that he is not related to the claimants. And thereupon the said Thomas K. West was examined by the counsel for the said defendants, and in answer to interrogations testified as follows:

1. Question. To what tribe and band of Indians do you belong?

Answer. To the Wahpeton Band of Sioux Indians.

2. Question. State, if you know, what was the western line of the four bands of Minnesota Sioux before the treaties of Traverse des Sioux and Mendota in 1851, according to the history and traditions of the band to which you belong.

(The question is objected to for the following reasons: First, that it is immaterial and irrelevant and calls for hearsay testimony; second, that since the above-named treaty or treaties was made, other treaties have been made between the Yankton Sioux Indians and the Government of the United States; that by reason of such treaties the Government is estopped from claiming anything other or different from the matters stated in said treaty, as are also the Indians, and both parties are bound by these treaties, and they being in writing and signed by the United States, as well as the Indians, are part of the records on file in the Indian Office at Washington, and are the best evidence; this being so, both the Indians and the United States are estopped to show any other or different boundaries at this late date, and if it is proposed to show anything different, it will be incompetent to show this by parol evidence. It is agreed by counsel for both parties that these objections shall apply to all evidence on the question of boundary lines, and need not be repeated, to subsequent questions of the same character put to this and other witnesses.)

Answer. I have heard the old men talking about the land belonging to the Minnesota Sioux extended to the Sioux River.

2a. Question. What was the Sioux name for the Sioux River?

Answer. Tchan-kas-an-data.

3. Question. When did you hear the old men of the tribe speak of the Sioux River as the western boundary of their lands? Was it before the treaties, after then, or about that time?

Answer. At the time the treaty was signed.

4. Question. Did anyone ever tell you what the western boundary was? If so, who was it?

Answer. My father.

5. Question. What did he say to you when he told you?

Answer. He came home from the meeting with the commissioners and was talking about it at home.

6. Question. About how old were you at that time?

Answer. I was about 14 years old.

7. Question. Where were you born?

Answer. Where the city of Faribault is now.

8. Question. Where were you living when the trouble of 1862 started?

Answer. Redwood Falls, Minn.

9. Question. When did you move away from Redwood Falls?

Answer. I went away from there as a prisoner.

10. Question. What Indians roamed about the country where Pipestone, Minn., is, and around here, if you know—about the time or before the treaties of 1851?

(Objected to by Mr. French on the part of the claimants and plaintiffs for the reason that no proper foundation has been laid, and it is incompetent, immaterial, and irrelevant to any issue in this case; and for the further reason that this action is based upon certain treaties made and entered into by and between the Yankton Sioux Indians and the Government of the United States, which treaties have been confirmed by acts of Congress and can not now be inquired into in this proceeding by parol. This objection applies to all evidence of the same or similar character of this witness, or any other that may be called, without repeating the same.)

Answer. The Sissetons and Wahpetons of White Lodge's Band.

11. Question. Was there any lands or patches cultivated, if you know, along the east side of the Sioux River by Indians at the time of the treaties of 1851?

Answer. I have heard that there were fields planted at Egan and along here by the Sissetons—fields of corn.

12. Question. Who told you about those fields having been planted along the river?

Answer. Marpiyahdinape, meaning "Appearing Cloud," told me.

13. Question. Who was this man, Appearing Cloud, who told you this? Was he a chief or simply a member of the tribe?

Answer. He was a medicine man.

14. Question. How old was he when he told you that?

Answer. He was an old man; dead now.

15. Question. How long ago did he tell you that?

Answer. Six years ago, probably.

16. Question. Did you yourself ever hunt to the Sioux River? If so, how long ago?

Answer. I came to the creek the other side of Pipestone and did not come to the Sioux River.

17. Question. What creek was that?

Answer. Split Rock Creek.

18. Question. How old were you then? Where were you living?

Answer. About 21 years old and living at Red Wing, Minn.

By Mr. FRENCH:

1. Cross-question. When did you leave Red Wing?

Answer. At the time of the Minnesota outbreak.

2. Cross-question. Where did you go?

Answer. We were held as prisoners by the white people.

3. Cross-question. How long?

Answer. Four years.

4. Cross-question. You mean that you were held four years at Redwing?

Answer. I was arrested at Redwood Falls and taken to Davenport.

5. Cross-question. Did you ever see any of the Yankton Sioux Indians in this vicinity?

Answer. Yes.

6. Cross-question. How long ago?

Answer. Two years ago I was digging pipestone with them at Pipestone quarries.

7. Cross-question. How many were there?

Answer. Three.

8. Cross-question. Did you ever see any Yankton Sioux Indians there before that?

Answer. I saw them there off and on since I moved up here.

9. Cross-question. When did you move up here?

Answer. Over 40 years ago.

10. Cross-question. Did you ever see any Yankton Sioux Indians here before the treaty of 1851, called the Mendota treaty?

Answer. No.

Redirect by Mr. ANDERSON:

1. Redirect question. Is it not a fact that all of the Indians speaking the Sioux language have always had the privilege of taking pipestone from the Pipestone quarry for the purpose of making pipes and ornaments?

Question objected to as calling for conclusion of the witness and is immaterial and irrelevant.

Answer. It is my understanding that all the Indians who spoke the Sioux language to come there and get stone for pipes.

Final question. Do you know any other matter relative to the claim in question?

Answer. That is all I know.

Deposition of Joseph P. Hillers, for defendants, taken at Flandreau, S. Dak., on the 16th day of July, A. D. 1915.

Claimant's counsel, L. B. French; defendants' counsel, George M. Anderson.

At the same place on the same day, in the presence of the same counsel for both parties, JOSEPH P. HILLERS, a witness on behalf of the defendants, was produced, and, having been by me in like man-

ner sworn, deposed and said that his name is Joseph P. Hillers; that his occupation is that of a farmer; that he is 74 years of age; that his place of residence is near Flandreau, S. Dak.; that he has no interest, direct or indirect, in the claim which is subject of inquiry in said cause; and that he is not related to the claimants. And thereupon the said Joseph P. Hillers was examined by the counsel for the defendants, and, in answer to interrogatories, testified as follows:

1. Question. To what tribe and band of Indians do you belong?

Answer. Sioux Tribe, Medawakanton Band.

2. Question. Where were you born?

Answer. Where Minneapolis now stands.

3. Question. How old were you when the treaties of Traverse des Sioux and Mendota were made in 1851?

Answer. Twelve years of age.

4. Question. State, if you know, of what according to the history and tradition of your tribe was the western boundary of the lands of the Minnesota Sioux at the time of the treaty of Mendota?

Answer. Along the Bix Sioux River.

5. Question. How did you know this?

Answer. I heard my father talking about this to some man of the tribe.

6. Question. When did you first hear of this?

Answer. It was after the signing of the treaty of Mendota.

7. Question. How long after the signing of the treaty of Mendota?

Answer. About eight years.

8. Question. How old was your father at that time? Was he an old man?

Answer. My father was about 60 years old.

9. Question. Did you hear any of the old men of the tribe talking about this boundary line besides your father?

Answer. I heard them say the land along the Big Sioux River was the boundary and heard others say the land west of the Pipestone quarry belonged to them.

10. Question. Do you know what band of Indians, if any, roamed over the land west of the Pipestone and east of the Sioux River?

Answer. The Wahpetons and Sissetons—a small band of the Sissetons called "The People Who Lived on the Hill."

By Mr. FRENCH:

1. Cross-question. Did you ever see any of the Yankton Sioux Indians in this vicinity or near the Pipestone quarry?

Answer. I have seen them over to Pipestone digging for pipestone.

2. Cross-question. Who was the Indian agent in charge of your band of Indians at and before the Mendota treaty of 1851?

Answer. He was a white man, but I do not know his name.

3. Cross-question. Do you know where your father got annuities in 1851 and before that?

Answer. I do not know of them getting anything before 1851.

4. Cross-question. When did you see the Yanktons gathering pipestone at the quarries, as near as you can tell?

Answer. I saw them every time they came up there.

5. Cross-question. How many years?

Answer. Two or three or four years ago. This is the first summer that I have not seen them.

6. Cross-question. Do you know of the Yankton Sioux Indians making trouble with the Sissetons and the Wahpetons at the time of the drawing of annuities or rations before the treaty of 1851 or since then?

Answer. I have never heard of the Yanktons being up there at the time or making trouble.

By Mr. ANDERSON :

1. Redirect question. Is it not a fact that all Indians speaking the Sioux language have always had the privilege of taking all of the stone they wanted out of the Pipestone quarry for making pipes and ornaments?

(The same objection is made to this as was made to the same question asked of the preceding witness.)

Answer. That was my understanding that all people speaking the Sioux language had the right to go there and take out the stone they wanted and use as they saw fit.

2. Redirect question. Did you mean to use it for pipestones or building houses or which?

Answer. It is hard to dig out. We could not build houses with it.

Final question. Is that all you know about it?

Answer. Yes.

Deposition of John Eastman, for defendants, taken at Sisseton Agency, S. Dak., on the 19th day of July, A. D. 1915.

Claimant's counsel, L. B. French; defendants' counsel, George M. Anderson.

JOHN EASTMAN, having been produced as a witness on behalf of the defendants, was by me sworn, before any question was put to him, to tell the truth, the whole truth, and nothing but the truth relative to the said cause; and thereupon deposed and said that his name is John Eastman; that his occupation is that of minister; that he is 66 years of age; that his residence is the Sisseton Agency, S. Dak.; that he has no interest, direct or indirect, in the claim which is the subject of inquiry in said cause; that he is not related to the claimants. And thereupon the said John Eastman was examined by the counsel for the said defendants, and in answer to interrogations testified as follows:

1. Question. To what tribe and band do you belong?

Answer. Sioux Tribe, Medawakanton Band.

2. Question. How old were you when the treaties of Traverse des Sioux and Mendota were made in 1851?

Answer. — 1 or 2 years old. •

3. Question. Do you know from the history and traditions prevailing among the Minnesota Sioux what the western boundary of lands was in the year 1851 and prior to the treaties of that date?

(The question is objected to for the following reasons: First, that is immaterial, irrelevant, and calls for hearsay testimony; second, that since the date of the above-named treaty or treaties have been made between the Yankton Indians and the Government of the United States, as well as between the Medawakantons, and that so far as the Government is concerned and the Indians who are parties to the said treaties they are bound by these

treaties, which form a part of the files and records in the Office of Indian Affairs, and are the best evidence of what these boundary lines were; third, this being so, both the Indians and the United States are stopped from in any manner questioning the validity of these treaties especially by parol evidence; therefore they can not be questioned in this way. It is agreed by and between the counsel on both sides of this action that this objection shall apply to all questions and answers relating to the question of boundaries and that this objection may not be repeated.)

Answer. I heard.

4. Question. What was the western line, as you heard it?

Answer. I heard that it was from Lake Kampeska, down on the Sioux River, to Flandreau and follow the river south.

5. Question. Whom did you hear talking about this land?

Answer. I heard different men—Big Eagle, Two Stars, and some other old men.

6. Question. Big Eagle was a chief, wasn't he?

Answer. Yes, sir.

7. Question. Was Two Stars a chief?

Answer. He was chief since 1867.

8. Question. State, if you know, whether it was a tradition and the understanding of the tribe that the Sioux River was the western boundary of the lands?

(Objected to as calling for a conclusion of witness.)

Answer. Yes, it was considered so.

9. Question. What band or bands live near and roamed over the land on which the Pipestone quarry is located.

Answer. Lean Bear's Band of Sisseton and Wahpeton.

10. Question. How did you know that Lean Bear's Band lived near there and roamed over those lands?

Answer. I have been there to the village.

11. Question. How did you know that they lived there before 1851?

Answer. Yes; my uncle married in that band and he told me about it.

12. Question. Were all Indians speaking the Sioux language privileged to come to the quarry and take all the stones that they needed for pipes and ornaments?

(Question is objected to—first, that it calls for the conclusion of the witness; second, for the reason that by the treaty of 1858 and 1859, free and unrestricted use of these pipestone quarries was granted to the Yankton Sioux Indians and guaranteed by the Government of the United States, and that if other Indians went there for the purpose of quarry stone for pipe and ornaments they would be trespassers on these lands. It is agreed by counsel for both parties that this objection shall apply to all succeeding questions asked of this and other witnesses.)

Answer. Yes, sir.

13. Question. How do you know this?

Answer. Because all Indians go there digging—that is, all speaking Sioux language.

14. Question. How did you know about their going there taking stone before you were old enough to know anything about it? Who told you?

Answer. I heard it from the old people.

15. Question. State whether or not it was a tradition of the tribe?

Answer. Yes, it was.

16. Question. How far back did this tradition go?

(That question is objected to for the reason that it goes beyond the memory of this witness. It could be only hearsay.)

Answer. It must have been over 200 years. It was over 200 years since the Assinniboinis left and the Sioux have owned the Pipestone quarry ever since.

17. Question. Were there any other bands of the Minnesota Sioux living near Pipestone besides Lean Bear's Band?

Answer. I do not know any other.

18. Question. Was Lean Bear's Band a subband of White Lodge's Band?

Answer. Yes.

19. Question. Where did White Lodge's Band live?

Answer. He lived somewhere near there, but I can not say exactly where.

Cross-examination by Mr. FRENCH:

1. Question. When was it that you saw the Sioux Indians other than the Yankton Sioux getting pipestone from these quarries—before or after the treaty of 1859 with the Yankton Sioux?

Answer. It was 1861 the first time I saw them.

2. Question. Were those Indians that you saw at that time Yankton Sioux?

Answer. I saw Medawakanton and some of Lean Bear's Band of Sisseton and Wahpetons.

3. Question. Did you ever see any of the Yanktons there getting pipestone?

Answer. Yes, sir.

4. Question. Was that before or after the treaty of 1859?

Answer. First time I saw them digging there was in 1883 or 1884.

5. Question. Do you know whether or not the Yankton Sioux Indians also roamed over these lands where the pipestone quarries are?

Answer. I do not know.

6. Question. Have you seen the Yankton Sioux Indians at the Pipestone quarry more than once?

Answer. Yes; many times after 1883 and 1884.

7. Question. Do you know what Indians occupied the lands west of the Sioux River before the treaty of 1851, called here the Mendota treaty or Traverse des Sioux? Or did you hear of it?

Answer. I heard the Yankton Indians lived there west of the Sioux River.

Final question. Do you know any other matter relative to the claim in question?

Answer. No.

Deposition of Thomas A. Robertson, for defendants, taken at Sisseton Agency, S. Dak., on the 19th day of July, A. D. 1915.

Claimant's counsel, L. B. French; defendants' counsel, George M. Anderson.

At the same place, on the same day, in the presence of the same counsel for both parties, THOMAS A. ROBERTSON, a witness on behalf

of the defendants, was produced, and, having been by me in like manner sworn, deposed and said that his name is Thomas A. Robertson; that his occupation is that of a farmer; that he is 75 years of age; that his place of residence is Veblen, S. Dak.; that he has no interest, direct or indirect, in the claim which is subject of inquiry in said cause; and that he is not related to the claimants. And thereupon the said Thomas A. Robertson was examined by the counsel for the defendants, and, in answer to interrogatories, testified as follows:

1. Question. To what band and tribe do you belong?

Answer. To the Sisseton and Wahpeton.

2. Question. How much Indian blood have you?

Answer. One-eighth.

3. Question. Your father was a Scotchman, was he?

Answer. Yes.

4. Question. How much Indian blood did your mother have?

Answer. She was one-fourth Indian and the balance Scotch.

5. Question. Where were you living at the time of the treaties of Traverse de Sioux and Mendota in 1851?

Answer. I was living at Little Crow's village, about 2 miles down the river, where St. Paul now stands.

6. Question. Where were you living when the Sioux outbreak occurred in 1862?

Answer. I was living about 5 miles north of Redwood.

7. Question. Was it on the Minnesota River?

Answer. On the north side of the Minnesota River.

8. Question. What Indians, if you know, were living near the Pipestone quarry prior to and after the treaties of 1851?

Answer. Limping Devil's Band, part of which were Lean Bear's Band and White Lodge's Band.

9. Question. Do you mean that the main band was under Limping Devil, and White Lodge and Lean Bear had subbands?

Answer. Yes.

10. Question. Of what were those bands composed?

Answer. Sisseton and Wahpetons.

11. Question. How far, if you know, did the land of the Minnesota Sioux run west?

The same objection is made to this question as was made to the same question asked the preceding witness.

Answer. From what I have heard, they run from Lake Kampeska down the Sioux River to Flandreau; then I do not know where the land went from there.

12. Question. State, if you know from tradition or otherwise, what Indians lived between the Sioux River and the James?

Answer. I forget the chief's name, but the Yanktonais. I remember the chief's name now; it was Drifting Goose.

13. Question. Where, if you know from tradition or otherwise, was the home of the Yankton Indians?

Answer. On the Missouri River.

14. Question. What part of the Missouri River?

Answer. Down where Yankton is now and Fort Randall.

15. Question. Did you ever hear or know of any Indians having fields of corn in the neighborhood of Flandreau along the Sioux River; if so, who were they?

Answer. Not along the Sioux River, but about 25 or 30 miles northeast of the Sioux River.

16. Question. What Indians were they?

Answer. Sisseton and Wahpetons.

17. Question. What Indians roamed and hunted over the lands where Pipestone, Minn., is now situated?

Answer. Sisseton and Wahpetons.

18. Question. Both before and after the treaty of 1851?

Answer. Yes, sir.

19. Question. Do you know what the custom was among the Sioux or Dakota Indians as to getting stone for pipes and ornaments from the Pipestone quarry?

Answer. Yes.

20. Question. What was that custom?

(Objected to as immaterial and irrelevant, and for the further reason that it does not appear from the question whether it relates to the time before the treaty of 1859 or after; and that if it was since 1859, the Government, by the treaty of that date, guaranteed that the Yankton Sioux Indians the free and unrestricted use of the Pipestone reservation for the purpose of quarrying pipestone, and any bands roaming over that reservation or quarrying stone there would be trespassers.)

Answer. All the tribes speaking the Sioux and the Dakota language had the privilege of going there and getting all the stone they needed for pipes and ornaments.

21. Question. How long has this custom, if you know, dated back from tradition?

Answer. As far back as I can remember, and I think for 100 and perhaps 200 years.

22. Question. Was this a general tradition among the tribes?

Objected as calling for a conclusion of the witness.

Answer. Yes, sir.

23. Question. Did the Sioux from across the Missouri River also come there—known as Teton?

Answer. Yes.

24. Question. Do all of the Sioux still visit the Pipestone quarry to get stone for pipes and ornaments?

The question is objected to for the reason no proper foundation is laid for the question and it calls for a conclusion of the witness.

Answer. Yes, sir.

25. Question. How do you know that they do that yet?

Answer. I have seen the different bands start out and come back loaded with stone.

26. Question. You have been an interpreter for a long time, have you not?

Answer. Yes, sir.

27. Question. You were the official interpreter in case of Sisseton and Wahpeton Bands against the United States, were you not?

Answer. Yes, sir.

28. Question. Did you translate the Episcopal prayer book in the Sioux language?

Answer. Yes, sir.

29. Question. You also translated part of the Bible in the Sioux language?

Answer. Only as much of the Bible as contained in the Episcopal prayer book.

30. Question. Were you acquainted with Bishop Whipple?

Answer. Yes, sir.

31. Question. What was your relation to him?

Answer. I did this translating in the bishop's office at Faribault, Minn.

32. Question. Are you familiar with the history and traditions of the Sioux or Dakota Nation?

Answer. Yes, sir.

Cross-examination by Mr. FRENCH:

1. Question. Where do you live now?

Answer. I live in Marshall County, S. Dak.

2. Question. How long have you lived there?

Answer. About 40 years.

3. Question. Where were you living in 1862?

Answer. I was living at Beaver Falls, Minn., about 5 miles from Redwood Agency.

4. Question. How far was your residence then from Pipestone—I mean the quarry?

Answer. About 75 miles.

5. Question. In what year did you move to Marshall County?

Answer. I came to Browns Valley in 1867 and lived there in 1871, and moved on to the place where I am now in 1871.

Final question by NOTARY. Do you know of any other matter relative to the claim in question?

Answer. Only that I was out as far as the James River with the commissioner from Washington in 1858, who wanted to treat with Drifting Goose Band of Yanktonai, and I knew that they lived there. Also in 1858 and 1859 I was out as far as Flandreau, where Limping Devil and the different bands of Sisseton and Wahpetons were living and had their fields.

Deposition of Joseph R. Brown, for defendants, taken at Sisseton Agency, S. Dak., on the 19th day of July, A. D. 1915.

Claimant's counsel, L. B. French; defendants' counsel, George M. Anderson.

At the same place on the same day, in the presence of the same counsel for both parties, JOSEPH R. BROWN, a witness on behalf of the defendants, was produced, and having been by me in like manner sworn, deposed and said that his name is Joseph R. Brown; that his occupation is that of an interpreter; that he is 60 years of age; that his place of residence is Sisseton, S. Dak.; that he has no interest, direct or indirect, in the claim which is subject of inquiry in said cause; and that he is not related to the claimants; and thereupon the said Joseph R. Brown was examined by the counsel for the defendants and in answer to interrogatories testified as follows:

1. Question. Mr. Brown, what band of Sioux do you belong?

Answer. Sisseton and Wahpeton.

2. Question. What relation was Gen. Joseph R. Brown to you?

Answer. He was my father.

3. Question. Do you know from the history and traditions among your tribe what was the western boundary of the Minnesota Sioux?

The same objection is made to this question as made to the first witness called.

Answer. Yes.

4. Question. What was the western boundary of the four bands of Minnesota Sioux as you learned it from the old man of the tribe?

Same objection.

Answer. To the Sioux River.

5. Question. Can you remember any of the old men who told you that the Sioux River was the western boundary of the lands of the Minnesota Sioux?

Answer. I can remember two or three.

6. Question. What were their names?

Objected to as calling for hearsay testimony.

Answer. Gabriel Renville; he was chief of Sisseton and Wahpeton Indians; Two Stars, and Akipa, my grandfather.

7. Question. All three you have mentioned were chiefs of Sisseton and Wahpetons, were they not?

Answer. Yes.

8. Question. Was that the same Gabriel Renville who was in command of the Renville Scouts during the Sioux outbreak?

Answer. Yes.

9. Question. When did they tell you about this?

Answer. At different times since I lived here among them.

10. Question. How long have you lived among the Indians?

Answer. I came here when the Indians came here in 1865.

11. Question. Your father was agent of the four bands at Yellow Medicine, was he not?

Answer. Yes, sir.

12. Question. You are familiar with the current history and condition of the four bands of Minnesota Sioux, are you not?

Answer. Yes, sir.

13. Question. Do you know, from hearing the old men talk about it, what Indians lived and roamed around the place where Pipestone now is?

Answer. It was the old home of the Wahpetons.

Cross-examination by Mr. FRENCH:

1. Question. Up to what time did the Wahpetons live in the vicinity of the Pipestone Reservation?

Answer. They lived about there until they were brought to their reservation at Yellow Medicine.

2. Question. Can you tell what year that was?

Answer. The agency was established in 1851, but the Indians were not moved there until 1856.

3. Question. Do you know anything about the Indians getting pipestone from the reservation?

Answer. I do not know anything about it, only what they said.

Final question by NOTARY. Do you know of any other matter relative to the claim in question?

Answer. No; I have stated about all I know about it.

Court of Claims of the United States.

No. 31253.

YANKTON SIOUX INDIANS v. THE UNITED STATES.

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L. B. FRENCH,
Attorney for Claimants.

Deposition of Red Horse for claimants, taken at Wagner, S. D., on the 13th day of July, A. D. 1916.

Claimants' counsel, L. B. French; defendants' counsel, Chas. H. Bradley.

RED HORSE, having been produced as a witness on the part of the plaintiffs, deposed and said, through Guy Williamson, an interpreter also duly sworn by me to truly and faithfully interpret all questions propounded to said witness, and the answers given by said witness thereto, as follows: That his name is Red Horse, that his occupation is that of farmer that he is seventy-eight years of age, and is a member of the tribe of the Yankton Sioux Indians, and is interested as a member of said tribe in the result of this investigation. And thereupon the said Red Horse was examined by the counsel for the claimant and, in answer to interrogatories, testifies as follows:

1. Question. What is your name?

Answer. Red Horse.

2. Question. Where do you live?

Answer. Three miles east of Greenwood.

3. Question. Are you a member of the Yankton Tribe of Indians?

Answer. Yes.

4. Question. Were you at the Pipestone Reservation before the time that your tribe made a treaty with the Government?

Answer. Yes.

5. Question. Who were you there with?

Answer. The tribe was on a hunt east of the Pipestone Quarry and they all went there.

6. Question. Were you at a council of the Yankton Indians before the treaty of 1859 in regard to this Pipestone Reservation?

Answer. I was not there. I was not at any such meeting.

7. Question. I call your attention to a time when the Yankton Indians met up here at Fort Randall and sent some Indians, among others Strike-the-Ree, to Washington to make treaty in regard to the lands, and ask you if you were present?

Answer. Yes.

8. Question. Did you hear Strike-the-Ree make any speech there at that time?

Answer. Yes.

9. Question. What did he say?

(Counsel for defendant objects to the question on the ground that it calls for hearsay testimony from the witness.)

Answer. He said "my Children, I intended to go on a hunt at this time but the Great Father invites me to go to Washington, and I will go".

10. Question. Did he say anything else, and particularly did he say anything in regard to the Pipestone Reservation?

(The defendant objects to this question on the ground that it is leading, and also on the further ground that it calls for hearsay testimony.)

(It is stipulated and understood between counsel that this objection shall apply to all similar questions.)

Answer. He put his finger on his breast and said "the Pipestone Quarry belongs to me". He said "the Santees sold the Pipestone Quarry to me, and if the Great Father will give the Pipestone Quarry to me in the treaty I will sign it, otherwise I will not." He says "if they will reserve the Pipestone Quarry for me, I will sell them the rest of the country".

11. Question. How many Indians went to Washington with Strike-the-Ree?

Answer. There were twelve altogether including Strike-the-Ree.

12. Question. Were you at another council held at Yankton after Strike-the-Ree came back from Washington?

Answer. Yes.

13. Question. What year was that, if you can tell?

(Question withdrawn.)

14. Question. How long after the treaty was it that you attended this council at Yankton?

Answer. They were in Washington during the winter and came back in the spring and had the meeting immediately.

15. Question. How old are you?

Answer. Seventy-eight.

16. Question. What did Strike-the-Ree say at this council at Yankton?

Answer. I sat right near Strike-the-Ree and Strike-the-Ree said "Listen, children, I have sold the land, all but the Pipestone Quarry, as I told you six months ago". I intended to say before that at the time of my first visit to the Pipestone Quarry the tribe camped at the place for some time during the winter, and I remember playing with other boys on the ice in the bottom of the quarry with a top of pipestone which my father made. At that time I was seven years old.

17. Question. At this second meeting of the council after Strike-the-Ree came back from Washington, what did he say in regard to signing the treaty?

Answer. He didn't make a long speech and I don't remember anything else that he said.

18. Question. To refresh your recollection, I will ask you if he stated any thing about refusing to sign at first, but when he gave them the Pipestone Reservation then he signed?

(The question is objected to on the ground that it is leading and upon the ground heretofore made.)

Answer. He said that he wouldn't have signed it unless they had reserved the Pipestone Quarry. I don't remember his saying that he had refused to sign it.

The said witness was then cross-examined by the counsel for the defendant, and in answer to interrogatories, testified as follows:

1. Question. How long before the treaty of 1859 did you make your first visit to the Pipestone Quarry?

Answer. I was seven years old when I first made a visit to the Pipestone Quarry and I was twenty years old when the treaty was made.

2. Question. Where was the tribe living at the time of this first council, to which you have referred?

Answer. They were living down near Yankton but they all moved up near Fort Randall and had the meeting up there.

3. Question. What country did Strike-the-Ree refer to when he said that he would sell it if he were allowed to retain Pipestone Quarry?

Answer. I don't know exactly but I suppose it was all the land that the Yankton Tribe owned outside of the Reservation at this place.

4. Question. What do you mean by "the Reservation at this place?"

Answer. Well, I mean just the bounds of the Reservation as it was fixed in that treaty, from Choteau Creek west; that was the eastern boundary of the Reservation.

Thereupon the witness was asked by the notary if he has anything further that he wishes to say in regard to this matter and states that is all.

*Deposition of Matthew Leeds for claimants, taken at Wagner, S. D.
on the 13th day of July, A. D. 1916.*

Claimants' counsel, L. B. French; defendants' counsel, Chas. H. Bradley.

MATTHEWS LEEDS, having been produced as a witness on the part of the plaintiffs, deposed and said, through Guy Williamson, an interpreter also duly sworn by me to truly and faithfully interpret all questions propounded to said witness, and the answers given by said witness thereto, as follows: That his name is Matthew Leeds, that his occupation is that of farmer, that he is eighty-two years of age, and is a member of the tribe of the Yankton Sioux Indians, and is interested as a member of said tribe in the result of this investigation. And thereupon the said Matthew Leeds was examined by counsel for the claimants and, in answer to interrogatories, testified as follows:

1. Question. What is your name?

Answer. Matthew Leeds.

2. Question. Where do you live?

Answer. At White Swan.

3. Question. To what tribe of Indians do you belong?

Answer. The Yankton Tribe.

4. Question. How old are you?

A. Eighty-two.

5. Question. Were you ever at the Pipestone Reservation before the treaties that were made between the Government and your tribe?

Answer. No. I never went there until afterwards.

6. Question. Were you present at a council of the Yankton Indians with reference to the Pipestone Reservation, before the treaty was made, held at or near Fort Randall?

Answer. Yes.

7. Question. Did you know at that time Strike-the-Ree?

Answer. I did.

8. Question. Did you hear him make a talk at that council meeting of the tribe?

Answer. I heard it.

9. Question. What did he say in reference to this treaty about the Pipestone Reservation?

(It is understood that the objections made to the testimony of the previous witness shall apply to this witness's testimony.)

Answer. He said "the Pipestone Quarry belongs to me, to the Yankton tribe, the Santee have foolishly tried to sell it, and if the Great Father will reserve it for us I will sign this treaty, otherwise I will not."

10. Question. Were you present at another council of the Yankton Indians after Strike-the-Ree came back from Washington?

Answer. I was with the tribe and the whole tribe was there at that time. I don't remember any meeting held at Yankton. I remember a council that was held near Greenwood.

11. Question. What did Strike-the-Ree say about the treaty at that time?

(The defendant objects because he has not testified that Strike-the-Ree was there.)

(The question is withdrawn.)

12. Question. Were you present at a meeting of the whole tribe after Strike-the-Ree returned from Washington?

Answer. I was.

13. Question. Was Strike-the-Ree there?

Answer. Yes. Smutty Bear also, who was with Strike-the-Ree in Washington, was there.

14. Question. Did Strike-the-Ree make any speech there, any talk to the Indians?

Answer. He did.

15. Question. What did he say?

(The same objection to this testimony as made before.)

Answer. He said "I told you before I went to Washington that if the Great Father would reserve the Pipestone Quarry for us, I would sell all this country that belongs to us. Now I have been to Washington and have sold it and have come back to you." He said "I sold all the land from Willow Creek, about the line of South Dakota, and running north to Big Stone Lake and thence west along the divide to the Missouri River, and have reserved for us to live on a reservation twenty miles long and thirty miles wide at Greenwood, and the Great Father has agreed for a period of fifty years to support us at that Reservation."

16. Question. What, if anything, did he say as to whether or not the Great Father had given back to the Yankton Indians the Pipestone Reservation?

A. He said "I told you the Great Father would reserve to us the Pipestone Reservation, otherwise I would not have signed it."

The said witness was then cross-examined by counsel for defendant and, in answer to interrogatories, testified as follows:

1. Question. Where did your tribe live at the time of the councils to which you have referred?

Answer. At that time the Yankton Indians did not live long in any place. They lived by hunting the buffalo and went from one place to another over all the place that they claimed as their land.

2. Question. What did they claim was their land at that time?

Answer. From the Minnesota River west to the Black Hills and south into Nebraska.

3. Question. What was the eastern boundary of the land of your tribe?

(The interpreter states he does not give definitely any eastern boundary.)

Thereupon the witness was asked by the notary if he has anything further he wishes to state in regard to the matter, and states that he has not.

*Deposition of Sunrise for claimants, taken at Wagner, S. D.,
on the 13th day of July, A. D. 1916.*

Claimants' counsel, L. B. French; defendants' counsel, Chas. H. Bradley.

SUNRISE, having been produced as a witness on the part of the plaintiffs, deposed and said, through Guy Williamson, an interpreter also duly sworn by me to truly and faithfully interpret all questions propounded to said witness and the answers given by said witness thereto, as follows: That his name is Sunrise, that his occupation is that of farmer, that he is eighty-three years of age, and is a member of the tribe of the Yankton Sioux Indians, and is interested as a member of said tribe in the result of this investigation. And thereupon the said Sunrise was examined by counsel for the claimant and, in answer to interrogations, testifies as follows:

1. Question. What is your name?

A. Sunrise.

2. Question. How old are you?

A. Eighty-three.

3. Question. Are you a member of the Yankton Sioux Indian Tribe?

Answer. Yes.

4. Question. Do you know where the Pipestone Indian Reservation is?

Answer. I know.

5. Question. Were you ever there before the treaty between the Yankton Sioux Indians and the Government?

Answer. Yes, I saw the Pipestone Quarry before the treaty.

6. Question. Do you know how long before the treaty?

Answer. I don't remember just how many years but it was when I was seventeen years old I saw the Pipestone Quarry.

7. Question. Were you present at a council of the Yankton Indians at or near Fort Randall?

Answer. Yes, I was there.

8. Question. Was Strike-the-Ree there?

Answer. Yes.

9. Question. Did you hear him make a talk to the Indians there at that time.

Answer. Yes.

10. Question. What did he say in reference to the Pipestone Reservation, if anything?

(Objected to on the ground it calls for hearsay testimony.)

Answer. I heard him say "the Pipestone Quarry belongs to me but some people have tried to steal it away, and if I go to Washington I will demand the Pipestone Quarry to be given".

11. Question. Were you present at another meeting of the Yankton Indians held at Yankton after Strike-the-Ree came back from Washington?

Answer. I was there at the time but did not attend the meeting.

12. Question. Were you present at any meeting of the Indians

where he told the Indians what he had done at Washington with reference to the Pipestone Reservation?

Answer. Yes.

13. Question. Where was that?

Answer. Yes, I did attend a meeting at Yankton where he told what he did.

14. Question. You may state what he said.

(The same objection as before.)

Answer. He said "I have been to Washington and signed a treaty". That is all. "I signed the treaty reserving the Pipestone Quarry and also giving to the Great Father a country."

15. Question. Do you remember anything else that he said?

Answer. He said some other things but I am getting very old and I don't remember what else he said.

16. Question. To refresh your recollection, did he state in substance that at first he refused to sign the treaty, and did not sign it until after they gave him the Pipestone Quarry?

(Objected to on the ground it is leading.)

Answer. Yes, he said something to that effect.

17. Question. State as near as you can what he said.

Answer. As I told you I am very old and my memory is very poor and I cannot state the words that he said.

The said witness was then cross-examined by the counsel for defendant, and in answer to interrogatories testified as follows:

1. Question. Where did you and your tribe live at the time of these council meetings to which you have referred?

Answer. Before the treaty was made the Yankton Indians lived east of the Pipestone Quarry.

2. Question. What was the western boundary of their country at that time?

Answer. The land sold by this treaty was bounded beginning at the Missouri River at the Mouth of the Big Sioux River near Sioux City; followed north up the Big Sioux River up to Lake Kampeska, and from there west in a general westerly direction to the Missouri River, the southern boundary being the river.

Thereupon the witness was asked by the notary if he has anything further he wishes to state in regard to the matter, and states that he does not care to say anything more.

Deposition of Moses Standing Bull for claimants, taken at Wagner, S. D., on the 13th day of July, A. D. 1916,

Claimants' counsel, L. B. French; defendants' counsel, Chas. H. Bradley.

MOSES STANDING BULL, having been produced as a witness on the part of the plaintiffs, deposed and said, through Guy Williamson, an interpreter also duly sworn by me to truly and faithfully interpret all questions propounded to said witness and the answers given by said witness thereto, as follows: That his name is Moses Standing

Bull, that his occupation is that of farmer, that he is sixty-seven years of age, and is a member of the tribe of the Yankton-Sioux Indians, and is interested as a member of said tribe in the result of this investigation. And thereupon the said Moses Standing Bull was examined by counsel for the claimants, and, in answer to interrogatories, testifies as follows:

1. Question. What is your name?

Answer. Moses Standing Bull.

2. Question. Where do you live?

Answer. I live near Greenwood.

3. Question. Are you a member of the Yankton Sioux Indian Tribe?

Answer. Yes.

4. Question. Were you present at the meeting or council of the tribe before Strike-the-Ree went to Washington to make a treaty with the Government?

Answer. Yes, I was there.

5. Question. Where was that council held?

A. Near Fort Randall.

6. Question. Was Strike-the-Ree there at that time?

Answer. Yes.

7. Question. Did he say anything in regard to the Pipestone Reservation?

(Objected to as leading.)

Answer. Yes.

8. Question. What did he say?

(Objected to on the ground it is hearsay testimony.)

Answer. He said "the Santecs have tried to sell the Pipestone Reservation and when I go to Washington I am going to demand it be given back to me.

9. Question. Were you present at a later council of the Indians after Strike-the-Ree returned from Washington?

Answer. Yes.

10. Question. Where was that held?

Answer. That was held near Yankton.

11. Question. What, if anything, did Strike-the-Ree say about the Pipestone Reservation at that time?

(Objected to on the ground it is leading.)

Answer. He said "I told you six months ago before I went to Washington that I was going to demand the Pipestone Quarry and now it has been six months and I signed a treaty giving us the Pipestone Quarry.

12. Question. How old are you?

Answer. Sixty-seven.

No cross-examination by counsel for defendant. Thereupon the witness was asked by the notary if he has anything further he wishes to state in regard to the matter, and states this is all he has to say.

*Deposition of Iron Bull for Claimants, taken at Wagner S. D.,
on the 13th day of July, A. D. 1916.*

Claimants' counsel, L. B. French; defendants' counsel, Chas. H. Bradley.

IRON BULL, having been produced as a witness on the part of the plaintiffs, deposed and said, through Guy Williamson, as interpreter also duly sworn by me to truly and faithfully interpret all questions propounded to said witness, and the answers given by said witness thereto, as follows: That his name is Iron Bull, that his occupation is that of farmer, that he is seventy-three years of age, and is a member of the tribe of the Yankton Sioux Indians, and is interested as a member of said tribe in the result of this investigation. And thereupon the said Iron Bull was examined by the counsel for claimants and, in answer to interrogatories, testified as follows:

1. Question. What is your name?

Answer. My name is Iron Bull.

2. Question. How old are you?

Answer. Seventy-three.

3. Question. Where do you live?

Answer. I live five miles north of Greenwood.

4. Question. Are you a member of the tribe of Yankton Sioux Indians?

Answer. Yes.

5. Question. Were you ever at the Pipestone Reservation before the treaty between the Yankton Indians and the United States made about 1858?

Answer. Yes.

6. Question. Were you present at a council of the Yankton Indians at which Strike-the-Ree made a speech in regard to going to Washington to make a treaty in regard to the land of the Sioux Indians?

Answer. Yes, I was there.

7. Question. Where was it held?

Answer. At Fort Randall.

8. Question. Did Strike-the-Ree make a speech there to the Indians?

Answer. Yes, he made a speech to the Indians.

9. Question. What did he say to them in reference to the Pipestone Quarry?

(Objected to on the ground it calls for hearsay testimony.)

Answer. He said "My children, I have heard that the Santees have tried to sell the Pipestone Quarry which belongs to us. Now the Great Father has asked me to go to Washington to sign this treaty and I am going, but if they do not reserve the Pipestone Quarry to us I will not sign the treaty".

10. Question. Were you present at another council of the Yankton Sioux Indians at which Strike-the-Ree made a speech, after he came back from Washington?

Answer. Yes, I was there.

11. Question. What did Strike-the-Ree say, if anything, about the Pipestone Reservation at that time?

(The same objection as made above.)

Answer. At this meeting at Yankton Strike-the-Ree said "Children, I have been to Washington for the last six months arguing with the Great Father on this treaty. I have now secured the treaty reserving for us the Pipestone Quarry and have signed the treaty selling the balance of the lands which we own.

The said witness was then cross-examined by the counsel for defendant, and, in answer to interrogatories, testified as follows:

1. Question. Did Strike-the-Ree make long speeches at these two council meetings to which you refer?

Answer. I have simply told you what I remember of this speech. He may have made a long talk but I am not a shorthand reporter and there was none there, and I don't remember anything else he said.

2. Question. How old did members of the tribe have to be to be admitted to the councils of the tribe?

A. Anybody could go into these councils that wished, the small boys as well as the older men. At that time I was about fifteen years old.

Thereupon the witness was asked by the notary if he has anything further he wishes to state in regard to the matter, and states that he has not.

Court of Claims of the United States.

No. 31,253.

YANKTON SIOUX INDIANS vs. THE UNITED STATES.

EVIDENCE FOR CLAIMANTS.

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Reply of the Interior Department p. 53

L. B. FRENCH,
Attorney for Claimant.

DEPARTMENT OF THE INTERIOR

WASHINGTON, Nov. 2, 1916.

DEAR MR. PUTNAM:

Referring to the petition filed in the Court of Claims in the case of the Yankton Sioux Indians *v.* The United States, No. 31253, and to the formal request dated September 19, 1916, upon this Department by the Court, on motion of Mr. L. B. French, attorney for the Indians, for certain evidence relating to the case, the following information is respectfully submitted. For convenient reference the requests in the motion for data are repeated and the answers follow:

1. Papers in regard to the treaty that was made between the Indians and the United States in the winter of 1858-9, being known as the treaty of the Yankton Indians with the United States, which has been duly confirmed by Congress. Said papers and talks relate to talks had between the Indians and the United States at the time of making such treaty.

August 18, 1913, the Indian Bureau advised the said attorney that a careful search had been made of the files of that office but no record was found of any talks had with Yankton Indians prior to or during the negotiations in connection with the treaty with these Indians of April 19, 1858 (11 Stat. L., 743).

A further and more extended search has been made of the records

of the Indian Office but no papers of the character indicated were found. The Department is therefore unable to furnish such papers or copies thereof.

2. That there are on file in the office of the Commissioner of Indian Affairs other papers, to-wit: directions for proceedings by one G. A. Lance, Agent of the United States, in taking charge of the Pipestone Reservation and removing therefrom all persons except the Yankton Indians. The directions are dated June 6, 1891. We desire a report of the parties who did this work, made to the Department in June, 1891.

No record is found in the Indian Bureau of the papers or correspondence above referred to; nor does it appear from the records that instructions of the character indicated were given to one "G. A. Lance, Agent of the United States."

However, it appears from an informal conversation with the said attorney that what he had in mind by the foregoing request was the removal of intruders from the Pipestone Reservation by United States troops.

The records show that in 1887, the Agent of the Yankton Agency recommended that certain intruders on the Pipestone Reservation be removed, and that under date of March 3, 1887, the Acting Secretary of the Interior directed the removal of such intruders upon the lands in question, with all their property and effects, under the provisions of Section 2149 of the Revised Statutes of the United States. It appears further that J. W. Bean, Captain, Fifteenth Infantry, U. S. A., acting under orders of April 26, and October 3, 1887, from the War Department, proceeded to the Pipestone Reservation in company with the Indian Agent and with an escort of troops, and on October 11, 1887, succeeded in effecting the removal of certain trespassers thereon, as set out in the report dated November 2, 1887, of J. F. Kinney, U. S. Indian Agent of the Yankton Agency.

Photostatic copies of the correspondence mentioned are inclosed. Such copies are certified.

3. Plaintiffs also desire a copy of the proceedings showing that the money received for right of way for railroad across the Pipestone Reservation, was paid to the Yankton Indians by the United States.

The records of the said Bureau show that in 1891 there was received from the Cedar Rapids and Northern Railway Company for its right of way through the Pipestone Reservation, Minnesota, under the provisions of the Act of March 2, 1889 (25 Stat. L., 1012), the sum of \$1,740.00 as damages; and that under date of January 9, 1891, the Secretary of the Interior granted authority

for the Indian Agent in charge of the Yankton Agency to pay per capita to the Yankton Indians the said sum of \$1,740.00 less the expenses of appraising the damages to the lands of the Indians—\$40.00. The records also show that E. W. Foster, United States Indian Agent, Yankton Agency, disbursed the sum of \$1,657.26 to 1,674 Indians, as shown on the roll dated May 9, 1891, and the further sum of \$25.74 to 26 Yankton Indians, as per supplemental roll of June 30, 1892.

Photostatic copies of these rolls marked "Exhibits 1 and 2," respectively, are transmitted herewith.

It is noticed that there appears to be a balance of \$17.00 of the said sum of \$1,700.00 which does not seem, from the payment rolls, to have been accounted for.

Cordially yours,

Bo SWEENEY,
Assistant Secretary.

HON. S. A. PUTNAM,
Chief Clerk, Court of Claims.
Inclosure 75017.

30035

COPY.

FORT RANDALL, D. T.
October 22nd, 1887.

To the ASSISTANT ADJUTANT GENERAL
Headquarters Department of Dakota,
Thro' Headquarters Fort Randall, D. T.

SIR:

I have the honor to inform you that in compliance with instructions contained in endorsements from Headquarters Department of Dakota, dated April 26th and October 3rd, 1887, and Orders No. 83 Post of Fort Randall, Dakota, I proceeded to the Red Pipestone Indian Reservation, Minn., on the 9th instant, arriving there on the 11th instant.

I at once sent for the settlers, and read to them my orders. I then informed them that the question of their removal was beyond discussion, that my orders were imperative in the matter, but that I did not wish to use any harsh measures. That I had requested an interview to ascertain their feelings, and if they felt disposed to leave the Reservation without further trouble, to make their removal as pleasant as possible, consistent with my instructions. After due consideration they all promised to leave, and take with them all their personal effects on or before the 18th instant, which they have done. One man, Mr. Huntley, whose house stands, one half *inside* the Reservation line and the other half outside, was allowed to remain in his house, but entered into a written agreement with Mr. Kinney the Indian Agent to have all his buildings removed on or

before June 1, 1888, and placed himself under two hundred dollar bonds for the faithful performance of his part of the contract.

The others signed a written agreement not to return to the reservation to live, or to occupy any buildings thereon, or to allow any person or persons to occupy any buildings thereon owned by them. They also entered into a written agreement with the Indian Agent, promising to have all their buildings removed on or before March 1st, 1888.

In my judgment the removal is permanent and that the use of troops are no longer required in the matter.

The agreement for the removal of the buildings, is in the hands of the Indian Agent, and will, no doubt, be forwarded to the Interior Department.

I am, Sir, Very respectfully,

Your obedient servant,

J. W. BEAN,
Captain, 15th Infantry.

HEADQUARTERS DEPARTMENT OF DAKOTA,

ST. PAUL, MINN., *October 28/87.*

Official copy respectfully forwarded through the Headquarters Division of the Missouri, in connection with instructions from the War Department, dated September 20th, 1887.

THOMAS M. VINCENT,
Assistant Adjutant General,
For and in absence of the
Brigadier General Commanding.

1st Indorsement

HEADQUARTERS DIVISION OF THE MISSOURI,

CHICAGO, *Nov. 1, 1887.*

Respectfully forwarded to the Adjutant General of the Army.
This seems to be a satisfactory settlement of the question.

ALFRED H. TERRY,
Major General—Commanding.

6274 A. G. O. 1887 with 5199 A. G. O. 1887

CHICAGO, *Nov. 1, 1887.*

Missouri, Division of
Major General Alfred H. Terry Commanding
Case No. 71

Forwards, in connection with War Dept. instructions of 20th

Sept., report of Capt. J. W. Bean, 15th Inf. of removal of settlers from Red Pipestone Indian Reservation, Minn.

Official copy—File.

L. C. DRUM,
Adjutant General.

A. G. O. Nov. 5, 87.

For the Honorable Secretary of the Interior.

WAR DEPARTMENT, Nov. 9, 1887.

Official copy respectfully furnished for the information of the Honorable Secretary of the Interior.

WM. C. ENDICOTT,
Secretary of War.

DEPARTMENT OF THE INTERIOR, Nov. 10/87.

Respectfully referred to the Com'r of Indian Affairs.

S. A. JONES,
Acting Chief Clerk.

UNITED STATES INDIAN SERVICE,

YANKTON AGENCY, Nov. 2, 1887.

HON. COMMISSIONER INDIAN AFFAIRS,

Washington, D. C.

SIR: I have the honor to report the result of my visit to the Red Pipe Stone Reservation. With Captain Bean U. S. A. and ten soldiers acting under orders from the War Department, we left Arnom Oct. 10th last and arrived at Pipe Stone City in Minnesota, a short distance from the Dakota line, on the evening of the 11th. The following day I hired a conveyance and the Captain and I visited the families living on the reservation, notifying each to leave immediately. Two different conferences were held with the men who were living with their families on the reservation. All agreed to leave by the following Monday night; as they were made to understand that unless they left peaceably they would be evicted by force; the soldiers being used for the purpose of ejecting them. It was made apparent in these interviews, that these intruders were on the land for the purpose of acquiring some legal right to the soil, and in fact this was not denied by those whose houses and farms were clearly within the lines of the reservation. They admitted that they had tendered filings at the land office, which had been refused. Lieut. Bean U. S. A. from Fort Randall was detailed as Civil Engineer, who in running the lines of each side of the Section, found that one large two story house on the north line, was on the reservation, as was part of the addition, on the north side, a corn crib, and part of the barn attached to the premises. I refer to the report of Lieut. Bean which I have not seen, but which will probably reach the Department, and also to the report of Cap-

tain Bean for full information on the subjects which particularly fell to them, and what they did.

I found seven houses on the reservation, and six occupied—one having been abandoned. The names of the settlers are the following. C. C. Goodnow, Laura Goodnow his mother, H. W. George, W. W. Whitehead, F. A. Marvin, W. H. Hackabent and G. W. Huntly. Mr. Marvin had abandoned his house, but had not given up his settlement. Mr. Goodnow occupied a large country house, claimed 160 acres, and had located his mother on an 80 acre tract adjoining his claim. The other houses were less pretentious, except Mr. Huntly's, although the houses of Mr. George and Mr. Whitehead were full average country frame farm houses. The other three were cheap one story frame houses. The land claimed by these intruders, is good farming land, as is all of the land on the reservation, with the exception of one or two acres possibly three acres, covered by a small lake, or pond of water, and a strip running nearly across the section which forms a most valuable stone quarry, differing from the pipe stone which is found below the surface. The bed stone quarry yields a high grade of most valuable building stone, susceptible of a high polish, is hard and very durable. The best buildings of Pipe Stone City are of this stone. Aside from the pipe stone from which the indians make their pipes, and various unique ornaments, the value of the stone quartz can not be too highly estimated. I venture the opinion that when this stone is fully known and appreciated that it will be used in the erection of the walls of our most expensive public buildings. The reservation contains one section of land, is regarded by the indians by reason of its traditions with veneration. As there were at the time of my visit some eighty-five Yanktons there including women and children, it was a matter of great gratification to all of them to know that the intruder, who had for some years persisted in their efforts to rob them, were to be driven off. Under the order of the War Department the officer in command of the detachment, was forbidden from destroying property, and hence the houses of the intruders were left intact.

On Monday evening Oct. 17th the time given the intruders to leave, the Captain and I again took a drive over the reservation and found the houses vacated, except the house of Mr. Huntley, he claiming that he did not know just where the north line was at the time he built. I enclose copy of an agreement he signed agreeing to remove his house. As will be seen I give him until the first day of June next to remove his buildings.

Captain Bean took an obligation from parties to himself that they would not return to occupy their houses. His or ours were to make a "permanent eviction" and for his own protection he had them sign a paper to remain away. I also inclose copy of an agreement signed by five persons that they will remove their buildings by the first day of March next. Mr. Hochabout's name does

not appear to this paper, as he was in the country when I left, but he agreed to the terms and will abide by them. Mr. Goodnow, George, and Whitehead, are the most offended, with Goodnow as the leader of all; formerly an officer in the Land Office.

I also found a rail road track laid across the reservation near the center, on which a rail road has been operated for some years. I inclose copy of letter received from the company since my return, the result of two telegrams sent. I respectfully advise that the company be requested to pay an annual rental of \$50 a year from the time they made the road bed to this time, and \$100 a year from this time forward, or in default, that they remove their track from the reservation. This will be satisfactory to my indians, as since my return, I have had a full consultation with a large number of them, including the chiefs and head men in the . There is also a fair ground laid off and fenced on the reservation; on the land claimed by Mr. Goodnow, and with his written consent I inclose copy of a proposition made by the officers of the Association, which I recommend be approved by the Commissioner. This is the desire of my indians as proposed in the gathering referred to; as the fair ground and the holding a fair one week in the year does not interfere at all with getting out pipe stone, and is more than half a mile from their quarry.

By reason of the great value of the Red Pipe Stone Reservation, and the sacred tradition in the minds of my indians associated with it, I would most respectfully recommend for its better protection, that at no distant day it be securely enclosed, or that some person be appointed to watch over it to prevent vandalism. This is the desire of the indians.

Very respectfully,

J. F. KINNEY,
U. S. In. Agent.

Distance to Pipe Stone:

Agency to Arrnom	28 miles
Arrnom to Tripp	20 Rail
Tripp to Mitchell	34 "
Mitchell to Woonsockett	29 "
Woonsockett to Pipestone	104 "
Total	215

COPY

PIPESTONE, MINNESOTA, Oct. 17th, 1887.

The undersigned late settlers on the Red pipestone Indian Reservation, having vacated said Reservation with our family and personal property, and signed an agreement not to return to live on said reservation do further agree that we will remove our houses

and buildings outside the lines of said reservation between this time and the first day of March next.

C. C. GOODNOW.
 LAURA GOODNOW.
 H. W. GEORGE.
 W. W. WHITEHEAD.
 F. A. MARVIN.

COPY.

PIPESTONE, MINNESOTA, *Oct. 17, 1887.*

The undersigned officers of the Pipestone County Agricultural and Mechanical Association of Pipestone, having located our fair ground and built our fair ground fence, track and buildings on the Red pipestone Indian Reservation which improvements were made on the quarter section of land on the said reservation claimed by C. C. Goodnow as a squatter, and so located by his written permission, do now propose that in case the Yankton Indians who own said reservation will consent thereto, to lease said grounds, which contain about twenty-five acres, for three years from the first day of January next. And in case said Indians agree to lease said land for said period, we agree to pay for the use of said land fifty dollars for the present year, payment to be made January 1st, 1888, and seventy-five dollars for the use of said ground for the year 1888, payment to be made Oct. 1st, 1888. One hundred dollars for the year 1889, to be paid the first day of Oct., 1889. One hundred dollars for the year 1890, to be paid Oct. 1st, 1890, and we agree to enter into a written contract in case this proposition is accepted by said Indians, and ratified by the Interior Department, said agreement to bind said association according to the conditions in this proposition.

Signed JOHN STUART, *Vice-Pres.*
 A. SECHLER, *Secretary.*
 W. G. STOVER, *Treasurer.*

COPY

BURLINGTON, CEDAR RAPIDS AND NORTHERN RAILWAY

Assistant Superintendent's Office

G. A. Goodell, Ass't superintendent

ESTHERVILLE, IOWA, *Oct. 22nd, 1887.*

MAJOR J. F. KINNEY, Esq.,

U. S. Indian Agent,

Greenwood, Dak.

DEAR SIR: Your telegram of Oct. 18th from Pipestone was rec'd. I have delayed answering until I could consult with our counsel in regard to the matter.

At the time of building our line through Pipestone, we filed a notice and map in the Gen. Land Office. Our counsel advises us that this gives us right of way through this reservation, and that our title to our right of way is good.

However we shall not adverse to strengthening that title by procuring a lease from your Indians, providing we can do so at a normal expense. Under the circumstances we should be glad to receive from you a proposition for the lease.

Trusting to hear from you soon,

I remain yours very truly,

(Sig) G. A. GOODELL,
Asst. Supt.

COPY

PIPESTONE, MINNESOTA, *October 15th, 1887.*

This agreement entered into this fifteenth day of October, A. D. 1887, Whitneseth, that whereas by a survey of the lines of the Red pipestone Yankton Indian reservation it is found that the two story frame house of G. W. Huntley is located on the northwest corner of said reservation by about the width of said house, now this agreement made between J. F. Kinney, U. S. Indian Agent for the Yankton Indians, and G. W. Huntley, Witnesseth, that the said Huntley binds himself, his heirs, executors, or administrators and assigns, for and in consideration of being allowed by said Kinney as such agent the privilege of remaining with his house on said reservation until the first day of June next, to remove with his family and all his personal property and effects of every description, and his house and all buildings from said reservation and not return with his family or property to remain on said reservation. In default of a strict compliance with this agreement as herein provided, the said Huntley agrees to pay to said Kinney for the use of said Indians the sum of two hundred dollars, and fifty dollars additional for every month he remains on said reservation after the first day of June next.

then this obligation is to be null and void otherwise in full force and effect.

G. W. HUNTLEY.

PIPESTONE, MINNESOTA, *Oct. 15th, 1887.*

I guarantee the faithful performance of all the conditions of this contract by G. W. Huntley as stipulated in the within.

J. H. NICHOLS.

OFFICE OF INDIAN AFFAIRS

29563 Rec'd Nov. 7, 1887 Case No. 11

YANKTON AGENCY, *November 2, 1887.* J. F. Kinney, Agt.
Report of visit to the Red pipe stone Indian Reservation to evict

intruders. All left and sign paper not to return, and to remove their buildings.

4 inc. To Agt. Jany. 12/88.

ANNUITY PAY-ROLL.

For instruction fee to Foster, Agt., March 14, 1891, and from Secretary to Commissioner Jany. 9, 1891.

We, the Heads of Families, and individuals without families, of the Yankton Sioux Tribe of Indians, hereby acknowledge the receipt of One thousand six hundred and fifty-seven and $\frac{26}{100}$ Dollars (\$1657.26), from E. W. Foster, United States Indian Agent, in the sums severally affixed to our names, being our proportion of the Annuity of said Tribe of Indians for the year one thousand eight hundred and ninety-one.

[Pay-roll, showing payment of 99 cents to each person whose name appears thereon, not printed.]

ANNUITY PAY-ROLL.

Certificate of Witnesses.

We, the undersigned, hereby certify, on honor, that we were present and witnessed the payment by E. W. Foster, United States Indian Agent, on the respective dates mentioned in the foregoing Pay-Roll, of the several sums to the individuals, opposite whose names our signatures are affixed as witnesses, and that we saw said individuals sign the same, by writing their names or making their marks; and that the pages of said Pay-Roll are numbered from one (1) to forty-four (44) inclusive, and contains the names of Seventeen hundred sixteen (1716) persons, numbered from one (1) to seventeen hundred sixteen (1716) inclusive; and we further declare our entire disinterestedness in this matter.

Dated May 9, 1891 J. B. WALLBRIDGE,

Dated May 9, 1891 C. H. BONNIN,

Dated May 9, 1891 S. C. DE FOND,

Witnesses.

Certificate of Interpreter.

I, C. F. Picotte, Interpreter, hereby certify that I was present and witnessed the payment by E. W. Foster, United States Indian Agent, on the respective dates mentioned in the foregoing Pay-Roll, of the several sums to the individuals who have receipted for the same; that I saw said individuals sign the same, by writing their names or making their marks; that I fully explained the nature of

said payments to said individuals; that the pages of said Pay-Roll are numbered from one (1) to forty-four (44) inclusive, and contains the names of seventeen hundred sixteen (1716) persons, numbered from one (1) to seventeen hundred sixteen (1716) inclusive.

Dated May 9, 1891 C. F. PICOTTE,
Interpreter.

Certificate of Agent.

I, E. W. Foster, United States Indian Agent, hereby certify, on honor, that on the respective dates mentioned in the foregoing Pay-Roll I made payment of the several sums to the individuals who have receipted for the same; that the pages of said Pay-Roll are numbered from one (1) to forty-four (44) inclusive, and contains the names of seventeen hundred sixteen (1716) persons, numbered from one (1) to seventeen hundred sixteen (1716) inclusive; and that the aggregate amount of said payments was One thousand six hundred fifty-seven and $\frac{26}{100}$ Dollars (\$1657.26). (Payment to Nos. 162, 175, 240, 312, 397, 398, 399, 400, 401, 415, 592, 620, 716, 734, 843, 884, 1002, 1042, 1043, 1073, 1139, 1140, 1141, 1142, 1143, 1152, 1168, 1220, 1230, 1324, 1428, 1451, 1461, 1462, 1463, 1464, 1465, 1466, 1475, 1589, 1670, 1671, amounting to forty-one and $\frac{58}{100}$ Dollars (\$41.58) not having been made.)

Dated May 9, 1891 E. W. FOSTER,
Agent.

ANNUITY PAY-ROLL.

We, the Heads of Families, and individuals without families, of the Yankton Sioux Tribe of Indians, hereby acknowledge the receipt of Twenty-four $\frac{75}{100}$ Dollars (\$24.75) from E. W. Foster, United States Indian Agent, in the sums severally affixed to our names, being our proportion of the Annuity of said Tribe of Indians for the year one thousand eight hundred and ninety-two.

[Pay-roll, showing payment of 99 cents to each person whose name appears thereon, not printed.]

ANNUITY PAY-ROLL.

Certificate of Witnesses.

We, the undersigned, hereby certify, on honor, that we were present and witnessed the payment by E. W. Foster, United States Indian Agent, on the respective dates mentioned in the foregoing

Pay-Roll, of the several sums to the individuals, opposite whose names our signatures are affixed as witnesses, and that we saw said individuals sign the same, by writing their names or making their marks; and that the pages of said Pay-Roll are numbered from one (1) to two (2) inclusive, and contain the names of forty-two (42) persons, numbered from one (1) to forty-two (42) inclusive; and we further declare our entire disinterestedness in this matter.

Dated June 30, 1892 J. B. WALLBRIDGE,

Dated June 30, 1892 C. H. BONNIN,

Witnesses.

Certificate of Interpreter.

I, C. F. Picotte, Interpreter, hereby certify that I was present and witnessed the payment by E. W. Foster, United States Indian Agent, on the respective dates mentioned in the foregoing Pay-Roll, of the several sums to the individuals who have receipted for the same; that I saw said individuals sign the same, by writing their names or making their marks; that I fully explained the nature of said payments to said individuals; that the pages of said Pay-Roll are numbered from one (1) to two (2) inclusive, and contain the names of forty-two (42) persons, numbered from one (1) to forty-two (42) inclusive.

Dated June 30, 1892 C. F. PICOTTE,

Interpreter.

Certificate of Agent.

I, E. W. Foster, United States Indian Agent, hereby certify, on honor, that on the respective dates mentioned in the foregoing Pay-Roll I made payment of the several sums to the individuals who have receipted for the same; that the pages of said Pay-Roll are numbered from one (1) to two (2) inclusive, and contain the names of forty-two (42) persons, numbered from one (1) to forty-two (42) inclusive; and that the aggregate amount of said payments was Twenty-four and $\frac{75}{100}$ Dollars (\$24.75); (Payment to Nos. 2, 11, 12, 13, 14, 16, 17, 20, 26, 27, 29, 31, 32, 40, 41, 42, amounting to Fifteen and $\frac{84}{100}$ Dollars (\$15.84) not having been made.)

Dated June 30, 1892 E. W. FOSTER,

Agent.

In the United States Court of Claims

THE YANKTON SIOUX INDIANS,

vs.

THE UNITED STATES.

} NO. 31253.

I N D E X

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JAN 1 1917
L. B. French, Attorney for Claimants

CLAIMANTS REQUEST FOR FINDINGS OF FACT

The claimants considering the facts hereinafter stated to have been proven, and deeming them material to the due presentation of this case in the findings of fact, request the Court to find the same as follows:

I.

The Yankton Sioux Indians, the petitioners in this proceeding, are either the original parties to the treaty between the United States and the Yankton Sioux Indians made and entered into in 1858 (11 Stat. L., 743), ratified February 16, 1859, proclaimed February 26, 1859, and also either the original parties named in Article 16 of the treaty made and entered into with the Yankton Sioux Indians August 15,

1394 (28 Stat. L., 315), or their descendants and other legal representatives entitled to receive the benefits of those treaties.

II.

The Pipestone Reservation is a tract of land a title more than a mile square, situated in Sections 1 and 2, Township 106 North, Range 46 West, and Sections 35 and 36, Township 107 North, Range 46 West, Fifth Principal Meridian, Minnesota, containing 648.40 acres, and embracing the quarries of the well-known "red Pipestone" and title thereto in fee is claimed by said Yankton Sioux Indians (Rec. pp. 11, 12) (H. R. Doc. No. 535, p. 31, 56th, Cong. 1st, Sess.)

III.

In 1851 a treaty was made at Traverse des Sioux with the Sisseton and Wahpeton Indians (10 Stat. L. 949), by which treaty those Indians relinquished to the United States lands in the Territory of Minnesota lying east of a line defined in said treaty; and following this treaty the Yankton Sioux Indians charged the Sisseton and Wahpeton Indians with attempting to cede to the United States lands belonging to the Yankton Sioux Indians and particularly the "Pipestone quarries." (Rec. pp. 12, 44; Ind. Com'r Rept. 1857, pp. 52, 59, 83, 84, 106.)

IV.

The Pipestone Reservation was well within the country which had been prior to 1851 the hunting ground of the Yankton Sioux Indians, and which they claimed as their land. (Rec. pp. 44, 45, 47, 48, 49, 51, Ind. Com'r Rept. 1857, pp. 59, 83, 84, 106.)

V.

That immediately after the treaty of Traverse des Sioux in 1851 by the Sisseton and Wahpeton Indians, the Yankton

Sioux Indians because of the attempted sale of the Pipestone quarries by the Sisseton and Wahpeton Indians, made it a practice at all times and in every way that was open to them, to insist that the treaty was an attempt by the latter Indians to cede property which they did not own, and annually, at the payments made to the Sisseton and Wahpeton Indians, attended such payments and demanded a right to share in the money paid to the Sissetons and Wahpetons for said lands, on the ground that it was payment for lands owned by the Yankton Sioux Indians. (Rec. p. 14, Ind. Com'r Rept. 1857, p. 59). So persistent were the Yankton Sioux Indians in their demands that in 1858 a meeting was had with the Yankton Sioux Indians at Washington for the purpose of rectifying their complaint that the United States had attempted to purchase from the Sisseton and Wahpeton Indians lands which belonged to the Yankton Sioux Indians, and in April, 1858 a treaty was made with them. (11 Stat. L., 473.) (Rec. p. 15).

VI.

By this treaty of 1858, Article 8, it is provided "the said Yankton Indians shall be secured in the free and unrestricted use of the red Pipestone quarry, or so much as they have been accustomed to frequent and use for the purpose of procuring stone for pipes; and the United States hereby stipulate and agree to cause to be surveyed and marked so much thereof as shall be necessary and proper for that purpose, and retain the same and keep it open and free to the Indians to visit and procure stone for pipes so long as they desire." (Rec. p. 15).

VII.

The Pipestone quarry was made the sine qua non of the treaty of 1858, until this was assured him Struck-by-the-Rees a Yankton Sioux Indian would not sign. (Rec. p. 17.) The Yankton Sioux Indians understood that the above

article eight of the treaty returned to them, and recognized their absolute title to the Pipestone Reservation, and they have always since then claimed that under said treaty, whatever may have been the wording thereof, they received and the United States gave to them the actual title as well as the right of possession to the Pipestone Reservation. (Rec. pp. 17, 44, 45, 46, 47, 48, 49, 50, 51 and 52; Sen. Ex. Doc. No. 27, p. 20, 53d, Cong., 2d, Sess.; same Doc. p. 55.)

VIII.

In the execution of its agreement under Article 8 of said treaty the United States caused so much of the quarry as appeared to be necessary and proper for the purposes of the Reservation to be surveyed and marked. A diagram and the field notes were duly returned and recorded in the General Land Office, and in the office of the Surveyor General of Minnesota, and in February, 1860, copies were transmitted to the Surveyor General of the United States for that state with instructions to respect them when the public surveys reached that locality. Afterwards, for some unexplained reason and in violation of the instructions, the Reservation was surveyed with other public lands in the vicinity, whereupon the Commissioner directed the Surveyor General to locate the Reservation on the official plat in his office from the field notes and plat of the original survey, or, if impossible, to direct a resurvey so that the Reservation might be located and described upon the official plats and its boundaries respected in accordance with the treaty. In pursuance of these instructions the Surveyor General caused a resurvey of the quarry, and its boundaries as resurveyed correspond and are substantially co-incident with the lines of the original survey. (H. R. Doc. 535, p. 31, 56th Cong., 1st, Sess. *The U. S. vs. Carpenter*, 111 U. S. 347; 28 Law Ed. 451.)

IX.

That a patent issued May 15, 1874 to a settler upon the

Reservation was held invalid by the Supreme Court of the United States. (U. S. vs. Carpenter, 111 U. S. 347; 28 Law Ed. 451.)

X.

That in 1887 the agent of the Yankton Agency recommended that certain intruders on the Pipestone Reservation be removed, and that under date of March 3, 1887, the acting Secretary of the Interior directed the removal of such intruders upon the lands in question, with all their property and effects, and that a detachment of the United States Army acting under orders of April 26 and October 3, 1887 from the War Department, proceeding to the Pipestone Reservation in company with the Indian Agent and with an escort of troops, and on October 11, 1887 effected the removal of trespassers thereon. (Rec. pp. 54, 55, 56, 57, 58, 59, 60, 61, 62.)

XI.

That in 1891 there was received by the United States from the Cedar Rapids & Northern Railway Company for its right of way through the Pipestone Reservation, Minnesota, the sum of \$1740.00 as damages, and that under date of January 9, 1891, the Secretary of the Interior granted authority for the Indian Agent in charge of the Yankton Agency, to pay per capita to the Yankton Indians the said sum of \$1740.00 less the expense of appraising the damages to the lands of the Indians,—\$40.00, and that the Indian Agent at Yankton Agency disbursed the sum of \$1657.26 to 1674 Indians as shown on the roll dated May 9, 1891, and the further sum of \$25.74 to 26 Yankton Indians as per supplemental roll of June 30, 1892. (Rec. pp. 54, 55, 62, 63, 64.)

XII.

That because their possession of the Pipestone Reservation had been a fruitful source of trouble to them since the

treaty of 1858, on account of the encroachment and depredations of white men and other Indians, and because their title to the Reservation was questioned by the United States, the Yankton Sioux Indians demanded, in the negotiations by the Government with them for the treaty ratified August 15, 1894, (28 Stat. L., 315), that the absolute ownership of the Pipestone Reservation by them should be settled by said treaty, making that the condition of their negotiations with the Commissioners of the United States, as had also been done by the Indians in the treaty of 1858, (Sen. Ex. Doc. 27, p. 21, 53d Cong., 2d, Sess.) ; and that in response to that demand it was provided by Article 16 of said treaty approved by Congress August 15, 1894, (28 Stat. L., 315), that "if the Government of the United States questions the ownership of the Pipestone Reservation by the Yankton tribe of Sioux Indians under the treaty of April 19, 1858, including the fee to the land as well as the right to work the quarries, the Secretary of the Interior shall as speedily as possible refer the matter to the Supreme Court of the United States to be decided by that tribunal. And the United States shall furnish without cost to the Yankton Indians at least one competent attorney to represent the interest of the tribe before the Court. If the Secretary of the Interior shall not, within one year after the ratification of this agreement by Congress, refer the question of the ownership of the said Pipestone Reservation to the Supreme Court as provided for above, such failure upon his part shall be construed as and shall be a waiver by the United States of all its rights to the ownership of the said Pipestone Reservation and the same shall thereafter be solely the property of the Yankton tribe of Sioux Indians, including the fee to the land."

XIII.

The Secretary of the Interior did not, within one year from August 15, 1894, the date of the ratification of said treaty by Congress, refer the question of the ownership of

the said Pipestone Reservation to the Supreme Court as provided by Article 16 of said treaty, and in a letter dated August 16, 1895, the first day after the required year had elapsed, a number of the leading men of the Yankton tribe in a letter referred to the Indian Office by their Agent asked to be informed by official and authenticated letter that the Pipestone Reservation was now without the possibility of a contest the property of the Indians of said tribe, as provided in Article 16 of said treaty. (H. R. Doc. No. 535, p. 32, 56th, Cong., 1st, Sess.; Rec. p. 18). No reply was made to the request of said Indians and no further action taken by the Government in reference to the Pipestone Reservation until by the Indian Appropriation Act of June 7, 1897, (30 Stat. L., 87), the Secretary of the Interior was directed to negotiate with the Yankton tribe of Indians for the purchase of the Pipestone Reservation. (Rec. p. 18).

XIV.

Under the Act of 1897 just referred to, the Secretary of Interior directed an Indian Inspector James McLaughlin to negotiate with the Yankton Sioux Indians for the purchase of the Pipestone Reservation, who concluded an agreement with said Indians to purchase said Reservation for the sum of \$100,000.00. This agreement was transmitted to Congress for ratification by the Indian Department March 24, 1900, together with the report, agreement and council proceedings, but no action was taken thereon by Congress, (Rec. p. 18.)

XV.

That by the Indian Appropriation bill of 1910, approved April 4, 1910, (36 Stat. L. 269) it is provided that jurisdiction be, and hereby is, conferred upon the Court of Claims of the United States to hear and report a finding of fact as between the United States and the Yankton tribe of Indians of South Dakota, as to the interest, title, ownership and

right of possession of said tribe of Indians in and to the Pipestone Reservation.

From the above and foregoing findings of fact, the claimants request the following:

CONCLUSION OF LAW.

That the Yankton tribe of Sioux Indians of South Dakota are the absolute owners in fee simple of the Pipestone Reservation, more particularly described in paragraph No. two of the Findings of Fact herein, and were such owners by fee simple title at the time this matter was submitted to the Court of Claims.

STATEMENT AND ARGUMENT.

This is a proceeding by the Yankton Sioux Indians of South Dakota under an Act of Congress approved April 4, 1910 (36 Stat. L. 269, Indian Appropriation Act), by which, under Section 22, the Court of Claims of the United States is given jurisdiction to hear and report a finding of fact as between the United States and the Yankton tribe of Indians of South Dakota as to the interest, title, ownership, and right of possession of said tribe of Indians in and to the following lands and premises, to-wit: The said lands being commonly known as the Pipestone Reservation and described and indicated by the township plat of the Government legal survey approved August 15, 1872 by the Surveyor General of the state of Minnesota as lying and being in Sections 1 and 2, of Township 106 North, Range 46 West, and Sections 35 and 36 of Township 107 North, Range 46 West of the Fifth Principal Meridian, Minnesota, containing 648.40 acres more or less, and embracing the quarries of the well know "red Pipestone;" action to be commenced by a petition in the name of said Yankton tribe of Indians, verified by the attorney for said Indians; the proceedings in all respects to be conducted without expense to the Indians, and

the United States, through the Secretary of the Interior to furnish to said Indians a competent attorney to represent them in said proceedings.

This being a proceeding on the part of the Yankton Sioux Indians against the United States it constantly must be borne in mind that the negotiations for the treaties and proceedings in connection therewith were conducted on behalf of the United States, an enlightened and powerful nation, by representatives skilled in diplomacy, masters of a written language, understanding the modes and forms of creating the various technical estates known to their law, and assisted by an interpreter employed by themselves; that the treaties and proceedings have been drawn by them and in their own language; that the Indians, on the other hand, are a weak and dependent people who have no written language and are or were at the time of these treaties, wholly unfamiliar with all forms of legal expression, and whose only knowledge of the terms in which the treaties and proceedings were framed was that imparted to them by the interpreter employed by the United States; and that the treaties and proceedings must therefore be construed, not according to the technical meaning of their words to learned lawyers, but in the sense in which they would naturally be understood by the Indians. *Jones vs. Meehan*, 175 U. S. 1, 44 L. Ed. 49, and cases there cited.

Chief Justice Marshall, speaking of Article IV of the treaty of Hopewell, of November 28, 1875, between the United States and the Cherokee Indians, which defined the boundary allotted to the Cherokees for their hunting grounds between the Indians and the citizens of the United States, (7 Stat. L. 19) said: "There is the more reason for supposing that the Cherokee chiefs were not very critical judges of the language, from the fact that every one makes his mark; no chief was capable of signing his name. It is probable the treaty was interpreted to them."

"Is it reasonable to suppose that the Indians, who could not write, and most probably could not read, who certainly

were not critical judges of our language, should distinguish the word 'allotted' from the words 'marked out?' " 6 Peters 551, 552, 8 L. Ed. 497, 498, and Mr. Justice McLean, concurring, said: "The language used in treaties with the Indians should never be construed to their prejudice. If words be made use of which are susceptible of a more extended meaning than their plain import as connected with the tenor of the treaty they should be considered as used only in the latter sense." 6 Peters 582, 8 L. Ed. 508.

The same Justice further says: "How the words of the treaty were understood by those unlettered people, rather than their critical meaning should form the rule of construction." In the case of *U. S. v. Kagama*, 118 U. S. 375, 30 L. Ed. 228, the Indian tribes in this country are spoken of as wards of the nation, communities dependent for their food and their political rights, as well as their protection on the United States and in the case of *Choctaw Nation v. United States*, 119 U. S. 1, 30 L. Ed. 306, it was said that the relation between the United States and the Indian tribes was that of superior and inferior, and that the rules to be applied in the case then before the court, were those that govern public treaties, which even in case of controversies between nations equally independent were not to be interpreted as rigidly as documents between private persons governed by a system of technical law, but in the light of the larger reason and the superior justice that constitute the spirit of the law of nations.

With this rule of law in mind we approach the argument of this case. The first treaty relating to the Pipestone Reservation, between the United States and the Yankton Sioux Indians was negotiated in 1858 and confirmed on the 16, day of February, 1859, (11 Stat. L., 743), and the part now to be construed, taken with all other parts of the treaty, reads as follows: "Section 8. The said Yankton Indians shall be secured in the free and unrestricted use of the red Pipestone quarry, or so much as they have been accustomed to frequent and use for the purpose of procuring

stone for pipes; and the United States hereby stipulate and agree to cause to be surveyed and marked out so much thereof as shall be necessary and proper for that purpose, and retain the same and keep it open and free to the Indians to visit and procure stone for pipes so long as they shall desire."

In 1851 a treaty had been made at Traverse des Sioux with the Sisseton and Wahpeton Indians (10 Stat. L. 949), by which treaty those Indians relinquished to the United States land in the Territory of Minnesota lying east of a line defined in said treaty; and following that treaty the Yankton Sioux Indians charged the Sisseton and Wahpeton Indians with attempting to cede to the United States lands belonging to the Yankton Sioux Indians and particularly the "Pipestone quarries," (Rec. pp. 12, 44, Ind. Com'r Rept. 1857, pp. 52, 59, 83, 84, 106). The Pipestone Reservation was well within the country which had been prior to 1851 the hunting ground of the Yankton Sioux Indians and which they claimed as their land. (Rec. pp. 44, 45, 47, 48, 49, 51, Ind. Com'r Rept. 1857, pp. 83, 84, 106). Immediately after the treaty of Traverse des Sioux, the Yankton Sioux Indians because of the attempted sale of the Pipestone quarry by the Sissetons and Wahpetons, made it a practice at all times and in every way open to them, to insist that the treaty was an attempt by the latter Indians to cede property which they did not own, and annually, at the payments made to the Sisseton and Wahpeton Indians, attended such payments and demanded a share in the money paid to the Sissetons and Wahpetons for said lands, on the ground that it was payment for lands owned by the Yankton Sioux Indians (Rec. p. 14, Ind Com'r Rept. 1857, p. 59). So persistent were the Yankton Sioux Indians that in 1858 a meeting was had with them, at Washington, for the purpose of rectifying their complaint that the United States had attempted to purchase from the Sissetons and Wahpetons lands which belonged to the Yanktons, which negotiations

resulted in the treaty of April 1868 (11 Stat. L. 473) Rec. p. 15).

The above references establish that the Yankton Sioux Indians had, ever since the making of the treaty of 1851 with the Sisseton and Wahpeton Indians, (10 Stat. L., 949), claimed the title to this Pipestone quarry, and that the Sissetons and Wahpetons had attempted to cede these lands to the United States without having any authority so to do, and that the Yankton Indians had at all times been present whenever annuities were paid to the Sisseton and Wahpeton Indians, and made demand for a portion thereof for the reason that they owned the Pipestone quarry, and that their persistence in this course was such that finally a treaty was entered into by the United States and the Yankton Sioux Indians, with the view of rectifying their complaint, which treaty was made and entered into in 1858 and confirmed by the United States in 1859. (11 Stat. L., 743).

The question then is, what title, if any, did the Yankton Sioux Indians have to the Pipestone quarry at the time when this treaty of 1858 was made, and what title did they have after it had been ratified by the United States? As heretofore stated, the Yankton Sioux Indians claimed at the time of this treaty, that they owned the Pipestone quarry, and that the Sissetons and Wahpetons had attempted to cede the same to the United States without having any authority so to do. After the treaty of 1858-9, the Yanktons had the same title that they had before, together with that which was granted to them by that treaty. It is clear that by that treaty they did not cede the Pipestone quarry to the United States, and after the treaty, and in 1859 the United States caused the same to be surveyed, marked and platted as the lands referred to in Article VIII of said treaty, and copies of the plats and field notes were transmitted by the Indian Office to the General Land Office with the request that the exterior boundaries "be respected upon the books" of that office.

As to what was claimed by the Indians prior to the

making of the treaty of 1858, see report of Superintendent Cullen to Commissioner of Indian Affairs, Ind. Com'r Rept., 1857, p. 52; also report of Charles E. Flandreau to Commissioner of Indian Affairs, Ind. Com'r. Rept., 1857, p. 59; also report of Superintendent Cullen to Commissioner of Indian Affairs, 1857, pages 83 and 84, also page 106; see also report of date October 15, 1857.

The first of these reports last above referred to, reads as follows:

"The Yankton Sioux who occupy the country to the north of the Big Sioux River and west of the present Sioux Reserve, are anxious to sell their lands to the Government and make a treaty. I would recommend that steps be taken as early as practicable in the spring, to make this treaty, as their lands lie in the territory which, at the next session of Congress, will probably receive a separate organization; and as the southern portion now open for settlement will receive the immigration which is already tending toward the further west, it would be advisable for the safety and peace of the settlers in this new country that these Indians should be satisfied and retained in subjection. These Indians are the ones who interfere annually with the payments at the upper Sioux Agency, under the pretense of the claim that they make, already referred to, against the Sissetons, and besides, they are exceedingly averse to any whites ever crossing their lands until some treaty is made with them. They number 450 lodges besides about 200 lodges of what are known as the Cut-Head Yanctonais, and cover a vast expanse of country, and the valleys of several large streams, the principal one being the James River, which empties into the Missouri and is represented as navigable for a considerable distance from the mouth. The great Pipestone quarry, "The Indian Mecca," which, by the treaty of 1851, is within the limits of the ceded land, seems to be the source of great misunderstanding among all these Indians, and some provision should be made by the Government to remove from sale or preemption this spot, which for generations they

have held sacred for the purpose which the name indicates, and as the material is in universal use among them for manufacturing their pipes, they consider it more valuable than all the lands they possess."

The next reads as follows, and is made, as the court will notice, by Charles E. Flandreau:

"It will be absolutely necessary that some measures shall be taken to prevent the Yanctons from interfering in the payments of the Sisseton and Wahpeton. The reason of their coming to these payments, and the ground of their claim, is as follows: When the treaty of Traverse des Sioux was made, (10 Stat. L. 949), the Sissetons and Wahpetons were called upon to sell certain lands, which they admitted did not belong to them, and declined selling, and were told that they were only to sell *their right* in the lands. This they consented to. These lands belonged to the Yanctons, or they had some claim on them, and the lands are now regarded as ceded lands, and the Yanctons claim a right to a share in the annuities, and every payment that has been made has been protracted and disturbed by the presence of these Indians. I recommend that a treaty be made with them for the purchase of their lands west of the Big Sioux River, and their being placed on a Reservation or removed north and west. The country west of the Big Sioux will soon be demanded for the whites for settlement, and the sooner it is purchased the less trouble the whites will have to get rid of the Indians and take possession of it. I regard it as necessary to the prosperity of our Indians that the influence of these Yanctons shall be withdrawn from them; and the best way to do it is to put the Yanctons under annuities and settle the difficulties that exist between them."

Report of Charles E. Flandreau, September 24, 1857, page 59, Ind. Com'r. Report, 1857. This is the same famous Charles E. Flandreau who at the making of the treaty in 1858-9 was present and assisted in making this treaty. Is

it possible that he did not know what the Indians' rights were? He was at that time an Indian Agent.

We quote one further citation: "I have just received reliable information that the Yanctons have driven all the settlers from the neighborhood east of Big Sioux River." (The Court will notice that he uses the words 'east of the Big Sioux River' here because the Pipestone quarry is east of the river.) "I am apprehensive of some trouble with them as they are represented to be in a destitute condition. I would further state they have requested the recall of Captain Noble's party, who were engaged in building the Northern Pacific Railroad. I will here state in this connection that in a council with some of the Yanctons, those who came to Yellow Medicine anticipating the payment, and exact contribution they make of the Sissetons; on the 19, inst., they expressed themselves favorable to making a treaty. I told them I would report their feelings. I am of the opinion it will be necessary to adjust the matters of difference between the Yanctons and Sissetons. The Yanctons claiming that the latter have, in the treaty of 1851, sold the lands belonging to the former, and particularly claiming the "Pipestone quarries;" and as these matters should be adjusted so as to prevent future troubles at subsequent payments, I would here call your attention to this subject." Report of W. J. Cullen, Superintendent, Ind. Com'r. Report, 1857, pages 83 and 84. Also page 106.

Further light is thrown upon what was claimed at the treaty of 1858, and the terms that were made by the Yankton Indians, and their understanding of that treaty, by the negotiations for the treaty made with the same Indians in 1892 and ratified in 1894, (28 Stat. L. 315). The report of the Commission appointed to treat with the Yankton Indians is found in Senate Ex. Document No. 27, 53d Cong., 2nd Session, in which report at page 10 the commission says that Henry Selwyn, an Indian, said as follows: "Until all things are carried out and straightened up this land (surplus lands of Indians) should not be sold."

Peter St. Pierre at the same place says: "It has been said that we had no right to the Pipestone Reservation. In the treaty of 1858 this Pipestone Reservation was made a condition of the treaty and was not signed until the Government bought back and gave it to us who owned it."

At the same page Henry Selwyn says: "When the commission was sent out to negotiate in 1858, Struck-by-the-Rees refused to sign the treaty to sell the land until the Pipestone quarry was returned to the tribe. When the Government promised to give this back to the Indians, Struck-by-the-Rees then signed the treaty, so that the basis on which this treaty of 1858 was made was the return of the Pipestone quarry."

In the same commission report, page 20, Senate Ex. Doc., 27, 53d Congress, 2nd Session, the commission makes the following statement: "The red Pipestone quarry was made the *sine qua non* of the treaty of 1858. Until this was assured to him, Struck-by-the-Rees would not sign the treaty. Since that time this possession of the Yankton Indians has been a fruitful source of trouble to them, because of the encroachments and depredations of white men, and other Indians, and now that their right to that possession is questioned by the Government, it fills them with a feeling akin to awe and consternation. Without evidence to that effect, it would not be thought that it was originally the intention of the Government to draw the line at the use of the quarries by the Indians, retaining the fee to the lands in the United States." At page 25 of this same report is found the following, purporting to be a statement by one Jandran, an Indian: "We asked Jandran if he wanted to hear the agreement read, and he said 'No, I am no child, I have heard the treaty and I understand it. I am ready to sign, and I want to tell you why I sign and I want you to write it down. I sign the treaty because it contains the article about the Pipestone Reservation, the whiskey clause, and the clause for the care of the poor, for schools,' etc." See also further proceedings of the Commission to treat with the Indians,

found also in Senate Ex. Doc. No. 27, p. 55, 53d Cong., 2nd Session, where Henry Selwyn says as follows: "I want to speak of the Pipestone Reservation. By the treaty of 1858 it seems that the present Pipestone Reservation was sold to the Government by the Santees. Before the Santees made this sale we owned the Pipestone quarry, and the Santee virtually stole it and sold it. When the commission was sent out to negotiate in 1858, Struck-by-the-Rees refused to sign the treaty to sell the land until the Pipestone quarry was returned to the Yankton tribe. When the Government promised to give this back to the Yanktons, Struck-by-the-Rees then signed the treaty."

So counsel for the Indians claim that the giving to the Indians by the treaty of 1858 of the Pipestone Reservation was the basis upon which the treaty was made, and Mr. Selwyn at the same place says further: "So the basis on which the treaty of 1858 was made was a return of the Pipestone quarry. The United States bought back this land and gave it back to the Indians. It was said at this time that this should belong to us, generation after generation, even should it descend to one man. This has been violated. We heard that a railway was to run across the Pipestone Reservation, but we thought the land being our own, they would consult us before it was done; but instead of coming to us they went on to Washington and there got a law passed authorizing this railroad to cross the Reservation for a certain amount of money. After this we heard that a school building was to be built there. This was done in the same manner. There was also two white men living on this agency, both have claims and are paying taxes. I have been at Pipestone and have talked with the Santees there, and they claim that the Pipestone quarry belongs to them. We have lost so much of our land, and I am afraid the Santees will get possession of this."

At page 58 of Senate Ex. Doc. No. 27 above referred to, being also a part of the report of the commission that negotiated the treaty with the Yankton Indians, Jandran

says as follows: "We all know that the people gathered here are poor. Whenever I have occasion to speak to young men gathered here I generally advise them to go and start on lands and farm. I have a few words to say, I will refer to those lands Mr. William Bean spoke of in Iowa and to those unceded lands, and then to the Pipestone Reservation. All these claims should be settled first, before the commissioners negotiate for these lands." At the same time and place, in said Document No. 27, page 61, being a part of the report of the commission that negotiated the treaty of 1892, Robert Clarkson says as follows: "This Pipestone quarry was ours; the President built a railway across it without our consent. They had a chance to do it was the reason why they did it."

For copy of the treaty of 1892-4, between the United States and the Yankton Sioux Indians, see Sen. Ex. Doc. No. 27, 53d Cong., 2nd Session, pages 26-30 inclusive. As bearing further upon the basis upon which these two treaties, that of 1858 and 1892-4 were made, see report to the Interior Department, made by James McLaughlin under direction of the Secretary of the Interior, March 15, 1912, at pages Rec. 12, 13 and the first eight lines of page 14. Also see letter of Superintendent Cullen to the Indian Office written from the Lower Sioux Agency, July 26, 1857, Rec. p. 14, and referred to by James McLaughlin; also other letters referred to by him on the same page, down to the words, "the following year, 1858." Rec. p. 15.

We refer to that part of Rec. p. 16 commencing with the words, "that Article 8 providing for the survey of the quarry was carried out, would appear from report of Agent A. H. Redfield, Superintendent of the Central Superintendency in October, 1859, namely, the celebrated red Pipestone quarry, a portion of which was reserved by the Yanktons in their treaty, has been surveyed and marked by Messrs. Hutton and Snow the past summer. (Ind. Com. Rpt. 1859, p. 128).

We also offer in evidence so much of Rec. p. 16 as reads as follows: "Six years after this the matter came again to

the surface, this time incidentally. In 1894 the Department transmitted to Congress a letter of the Indian Office dated December 9, 1893, accompanied by the report of the Yankton Indian Commission, an agreement made with those Indians December 21, 1892, for the sale of their surplus lands." And the following at the top of Rec. p. 17, (Sen. Ex. Doc. No. 27, 53d Con., 2nd Session): "In its report to the Indian Office March 31, 1893, the Commission said (page 15): 'By the treaty of 1858 the Yankton Indians ceded to the United States their claim to all lands excepting their reservation of 400,000 acres and the red Pipestone quarry.'"

We also offer in evidence so much of Rec. p. 17 as follows: "I want to speak of the Pipestone Reservation" and ends with "(P. 55)."

We also offer so much of Rec. p. 18 of said Report in evidence as reads as follows: "The Indian Appropriation Act of June 7, 1897, contained the following clause (30 Stat. L. 87). The Secretary of the Interior is directed to negotiate through an Indian inspector with the Yankton tribe of Indians of South Dakota for the purchase of a parcel of land near Pipestone, Minnesota, on which is now located an Indian Industrial School. The Indian school referred to was established on the reservation under Section 2 of the Act of February 16, 1891 (26 Stat. L. 764). It should be remarked that the Yanktons applied for compensation for this appropriation of their land, but the Assistant Attorney General, on September 17, 1891, rendered an opinion that the Indians were not entitled to such compensation for the reason that their rights to quarry stone were not infringed upon and that they would not suffer any damage from the construction of the school buildings." (Ind. Com. Rpt. 1892, p. 60.)

We also refer to that part of Rec. p. 18, as reads as follows: "Under the Act of 1897 just referred to, I was appointed to negotiate with the Indians, which I did, and reported from Yankton Agency, South Dakota, October 9, 1899, transmitting an agreement and the proceedings of council." And on this occasion we desire to call attention to the words

of Inspector McLaughlin above named, when engaged in negotiating with the Yankton Indians for the purchase of this very Pipestone Reservation when talking to the Indians in regard to the same, at page 17 of Doc. No. 535, House of Rep., 56th Cong., First Session: "It is hardly necessary to explain to you how you come to be the owners of this land (Pipestone Reservation) in fee simple, it was put in your treaty of December, 1892, which was approved in May, 1894. The title in that tract is therefore in you. In order to enable the Government to have control of that tract and care for it thoroughly and keep it up as a national park, I am here to see if you care to sell it. June 7, 1897, Congress inserted in the Appropriation Act a clause requiring the Secretary of the Interior to negotiate with you for that tract." See also the same document, page 9, where Inspector McLaughlin says in regard to this as follows: "This visit of mine here is under authority of an Act of Congress which became a law June, 1897, which authorized the Secretary of the Interior to send out an inspector to negotiate for this Pipestone section of land. That paragraph of the law which refers to the land is as follows: (Reads also a portion of his instructions from the Department.) As one of the speakers said, The Yankton Indians own that quarry. While it is true that the other Sioux Indians claim part of that quarry, the Yanktons are the only ones that are recognized as having any interest in that reservation, the Yanktons alone being mentioned regarding it in any negotiations between the Government and the Indians. * * * I wish to have you understand, however, that I do not consider that any other Indians have any claim to it, for this reason, that they are not mentioned in any of the treaties about it. When your people made the treaty forty-one years ago they very prudently and wisely provided for the visiting and taking stone from that quarry, and so they are the only ones mentioned as having any right to the land. Then, in your later agreement of 1892, there was placed an amendment recognizing your right to that quarry. A few years later there was

an item in the appropriation act which fixed the title absolutely in you, and that is why I am here today, to negotiate for that land or a portion of it."

I have sought by the above and foregoing to show the evidence, or a portion of it, upon which the claimants rely in this case, to prove that long before the treaty of 1858-9 there was a claim made by these Yankton Indians to be the owners of the Red Pipestone quarry or Pipestone Reservation. With this in view the Indians came to the meeting of the parties who negotiated this treaty in Washington. The treaty was made and is to be construed under the law as stated at the outset of this argument. That the Indians understood this treaty of 1858-9 to give them the absolute title to this land there can be no question, first, for the reason that they made it a condition precedent to entering into any treaty; second, that they believed that the treaty gave them the absolute title, until the United States Government without consulting them, in or about the year, 1891, authorized a railroad company to build its right of way across said Reservation, and took the money for the same without consulting the Indians and without at first paying them any part thereof, but afterwards paid to them the whole of the sum so received, thus giving a construction, as we claim, to this treaty, the same as that claimed by the Indians, in that they paid them the money for this right of way.

The United States further construed its treaties with the Yankton Indians to give them the absolute ownership of the Pipestone Reservation by directing the Secretary of the Interior to negotiate with them for the purchase thereof (30 Stat. L. p. 87). Inspector McLaughlin went before the Indians and stated to them that they were the owners of this land and that the Government had sent him there to negotiate a purchase of the same, and he did negotiate a purchase thereof, and entered into an agreement with the Indians by which they agreed to sell this Pipestone Reservation to the United States Government for the sum of \$100,-

000. Thus we claim that both parties have by their acts construed this treaty to mean that the Indians supposed it to mean at the time they made the treaty of 1858-9. Construing this treaty, then, in the light of the way it has been treated by and between the Government and these Indians, and in the light of the rule of construction in the first part of this brief referred to, in view of the fact that the Government stands in the relation of guardian to these Indians, and the language itself, and bearing in mind the further fact that the Indians have never claimed to cede, nor has the Government claimed that they did cede, any portion of this Reservation to the Government, but have always claimed it and still claim it as their own, does it not appear that these Indians own the title in fee of these lands?

In speaking of this, we are not unaware of the language used in other cases wherein the United States Supreme Court says that in the final analysis the United States are the owners of all the land and the Indians only owners of a possessory right. If this is true, is it not also true that these Indians are the owners of all the rights that they ever had in said Pipestone Reservation, and, in addition to the same, are the owners of whatever right was given to them by the treaty of 1858-9?

We would call the attention of the Court to the case of *Jones vs. Meehan*, decided by the United States Supreme Court, in the 175, U. S., at page 1, (44, L. Ed., page 49), where the Supreme Court in construing what, under treaties, would constitute as between the Indians and the United States a transfer of a fee simple title to lands, and in which they say it is almost wholly a matter of intent of the parties, —in other words, how the parties themselves understood it, with a strong presumption in favor of the Indians by reason of their dependent condition.

As we understand the language used by the Supreme Court in the above case, a fee simple title is created, as between the United States and the Indians, by any language which would naturally be so understood by the Indians.

While the language used in the treaty of 1858-9 is not, perhaps the most appropriate that might be chosen to transfer title, was not the intent and effect of this language as used in the treaty and the acts following, sufficient to transfer such title? First, the language in the treaty says: "The Yankton Indians shall be secured in the free and unrestricted use of the red Pipestone quarry, or so much thereof as they have been accustomed to frequent and use for the purpose of procuring stone for pipes; and the United States hereby stipulates and agrees to cause to be surveyed and marked so much thereof as shall be necessary and proper for that purpose," etc. The Indians at that time already had or claimed to have title to these lands. This is guaranteed to them by the Government so long as they shall desire. Nothing is said as to any return of this title in any way.

Again, when the United States sold a right of way over this reservation they gave to the Indians the money received for the same.

Again, the treaty of 1892-4 (28 Stat. L. 315) provides: "If the Government of the United States questions the ownership of the Pipestone Reservation, the Secretary of the Interior shall as speedily as possible refer the matter to the Supreme Court of the United States to be decided by that Court."

Again, they sent Mr. McLaughlin, Indian Inspector, to negotiate with the Indians for a purchase of this land, and he made an agreement with them for a sale of the land, for which the Government was to pay \$100,000.

It seems to us, then, that taking all these facts together, there is title in fee simple in the Indians. At least, since the treaty of 1858-9 these lands have been so treated both by the Indians and by the United States; but if we are wrong in this the Indians at least have the same title now that they did at the time of the treaty of 1858-9, with the added title of the treaty of 1892-4.

As I understand the Act of Congress by which this matter was submitted to this Court, this Court is merely to re-

port a finding of fact as between the United States and the Yankton tribe of Indians of South Dakota, as to the interest, title, ownership, and right of possession of said tribe. We claim, then, a title in fee under the treaty of 1858-9, but if we are not entitled to that, we are at least entitled to the right of exclusive possession, and a further right given us by the treaty of 1892-4. What then, is the effect of the treaty of 1892-4?

Section 16 of the treaty of 1892-4 reads as follows: "If the Government of the United States questions the ownership of the Pipestone Reservation by the Yankton tribe of Sioux Indians under the treaty of April 19, 1858, including the fee to the land as well as the right to work the quarries, the Secretary of the Interior shall as speedily as possible refer the matter to the Supreme Court of the United States, to be decided by that tribunal, and the United States shall furnish, without cost to the Indians, at least one competent attorney to represent the interests of the tribe before the court. If the Secretary of the Interior shall not, within one year after the ratification of this agreement by Congress, refer the question of the ownership of the said Pipestone Reservation to the Supreme Court, as provided for above, such failure upon his part shall be construed as and shall be a waiver of the United States of all rights to the ownership of the said Pipestone Reservation, and the same shall thereby be solely the property of the Yankton tribe of Sioux Indians, including the fee to the land."

The above clause constituting a part of the treaty was of course confirmed by the Senate of the United States, together with the other clauses of the treaty, and was a part of the consideration of the treaty, and, as we claim, a part without which the Yankton Sioux Indians would never have entered into the treaty at all. We claim, therefore, regardless of what title the Indians received through and by virtue of the treaty of 1858-9, the ratification of this treaty was in itself sufficient to convey to the Indians a fee simple title to the Pipestone Reservation. It was a part of the contract to

be fulfilled on the part of the United States, voluntarily entered into by the agents of the United States under proper authority and duly ratified by the Senate of the United States. The Indians, then, have performed the whole of their contract. Can it now be said that the United States shall not be compelled to perform its part of the contract? The treaty cannot be rescinded by either of the parties at this late date, not can the United States return to the Indians in connection what the United States received, as the lands ceded by the Indians in connection with this treaty have already been opened to settlement and sold by the United States.

The Indians have at all times and in every way that has been open to them, since the treaty of 1858-9, insisted upon the fact that the title was confirmed to them by the treaty of 1858-9, and if not by that treaty at least by the treaty of 1892-4, and that the title to this Reservation was in the Indians has been recognized in every way, not only by the officers of the Interior Department of the United States but has been ratified by the Senate of the United States, as we claim. That the treaty of 1858-9 was a valid one was recognized by the United States Court in case of the United States v. Carpenter, 111 U. S. Rep. 347, and the Indian Department of the United States recognized this title as being in the Indians, by payment to them of the money received for right of way from railway company, by sending to them James McLaughlin, an Inspector of the United States, to make a treaty for the purchase of said lands, and an agreement was entered into by said James McLaughlin on the part of the United States and by the Indians by which the Government agreed to pay the Indians \$100,000 for this Reservation. Can it be said now that the Government shall not perform its part of the agreement?

Both the treaties of 1858-9 and 1892-4 have been ratified by the Senate of the United States. These contracts then were complete. We do not at this time argue the question of whether or not it was possible to have submitted the

question of the title of the Indians to the United States Supreme Court, but we see no reason why, by the consent of both parties, this might not have been submitted to that Court. It, however, was not done, and, as we claim, it can not now be successfully argued that this part of the contract which was regarded by the Indians as an indispensable part, without which they would not have entered into the treaty, which was confirmed by the Senate of the United States, is not binding upon the United States, and we confidently assert that the fee simple title to the Pipestone quarry is in the Indians.

There is no claim of any fraud or wrongdoing on the part of the Indians in the making of this treaty, and there can be no argument that the Senate of the United States did not understand the terms of that treaty. It was made with full knowledge then on the part of both parties of what the treaty contained. The parties to this treaty were the United States, a great and powerful nation, with its agents well understanding the language and well understanding what they put into the treaty, the treaty was confirmed by the greatest legislative body in the world; and on the other hand were the Indians, few of whom at that time could read the English language at all, and all of whom needed an interpreter, who was usually furnished by the United States, and we say, therefore, that the United States is now estopped from claiming that the terms of this treaty should not be fulfilled on its part, and we ask that the title in fee simple claimed by the Indians be guaranteed to them by the findings of this Court.

Respectfully submitted,

L. B. FRENCH,
Attorney for the Yankton Sioux Indians.

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In the Court of Claims of the United States.

No. 31253.

THE YANKTON SIOUX INDIANS

v.

THE UNITED STATES.

AUG 21 1917

DEFENDANTS' OBJECTIONS TO PLAINTIFFS' REQUEST FOR
FINDINGS OF FACT AND BRIEF.

GEO. M. ANDERSON,
Attorney for Defendants.

WASHINGTON : GOVERNMENT PRINTING OFFICE : 1917

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fore requested to find in lieu thereof the following:

This suit was brought by the Yankton Tribe of Sioux Indians of South Dakota in pursuance of a provision of the Indian appropriation act of April 4, 1910 (36 Stat. 269, 284), which reads:

That jurisdiction be, and hereby is, conferred upon the Court of Claims of the United States to hear and report a finding of fact, as between the United States and the Yankton Tribe of Indians of South Dakota, as to the interest, title, ownership, and right of possession of said tribe of Indians in and to the following lands and premises, to-wit: The said lands above described and indicated by the township plat of the Government legal survey approved August 15, 1872, by the surveyor general for the State of Minnesota as lying in sections 1 and 2 of township 106 north, range 46 west, and sections 35 and 36 of township 107 north, range 46 west of the fifth principal meridian, containing 648.2 acres, more or less, and embracing the red pipestone quarries. Proceedings shall be commenced by petition in the name of said Yankton Tribe of Indians, which petition shall be verified by the attorney or attorneys for said Indians. The proceedings shall in all respects be conducted without cost or expense to said Indians, and the United States, through the Secretary of the Interior, shall furnish without cost to said Indians a competent attorney or attorneys to

appear for and represent them in said proceedings, the attorneys' fee therefor to be fixed by the Secretary of the Interior.

II.

The defendants object to the plaintiff's proposed finding No. II upon the ground that the statement made in the sixth and seventh lines that "title thereto in fee is claimed by said Yankton Sioux Indians" is improper in a finding, as the ownership of the quarry is a question of law to be decided by the court, and not a proper statement to be incorporated in the finding of fact. And there is a further objection that the location of the Pipestone Quarry has not been set out with sufficient clearness to locate it at once on the map with reference to the testimony as to occupation. The court is therefore requested to find in lieu thereof the following:

The Red Pipestone Quarry is located in the southwest corner of Minnesota about 15 miles east of the Big Sioux River and about 7 miles east of the South Dakota line. It is situated in sections 1 and 2 of township 106 north, range 46 west, and sections 35 and 36 of township 107 north, range 46 west of the fifth principal meridian, and contains 648.2 acres, more or less. (Rec., pp. 11, 12, and 25.)

III.

The defendants object to the plaintiffs' proposed finding of fact No. III upon the ground,

first, that the facts as to the cession have not been accurately stated; second, that there is no evidence that the Yankton Sioux charged the Sisseton and Wahpeton Indians with attempting to cede to the United States lands belonging to them, particularly the Pipestone Quarry. There are statements in official reports that the Yanktonais and Yankton Indians attempted to secure part of the annuities of the Sissetons after the treaty of July 23, 1851, but we have shown that the Indians referred to in all cases were really Yanktonais Indians. We object to the second statement for the further reason that the same facts have been set out in the plaintiffs' proposed findings No. V. For proof of these facts see defendants' brief, post, pp. 125-136.

The court is requested to find in lieu of the plaintiff's proposed finding No. III the following:

The Sisseton and Wahpeton Bands of Mississippi Sioux by the treaty of July 23, 1858 (10 Stat. 949), commonly known as the treaty of Traverse des Sioux, ceded all of their lands in the State of Minnesota, including the Pipestone Quarry, to the United States, and the Medawakan-ton and Wahpakoota Bands of Mississippi Sioux by the treaty of August 5, 1851 (10 Stat. 954), known as the treaty of Mendota, ceded the same lands which had been theretofore held in common by the four bands of Mississippi Sioux, who reserved for their future occupation a strip of land 10 miles wide on both sides of the Saint Peters or Minnesota River below the Yellow Medicine

River. The consideration for these treaties, after the payment of certain sums for specified purposes, was to be placed in the Treasury of the United States at 5 per cent to be paid to the said bands in 50 annual installments, thereby wiping out the entire consideration, principal and interest.

IV.

The defendants object to the plaintiffs' proposed finding No. IV upon the ground that the statement that the Pipestone Reservation was well within the country of the Yankton Sioux prior to 1851 is not established by the record in this case. The court is therefore requested to find in lieu thereof the following:

The Mississippi Sioux, composed of the Sisseton, Wahpeton, Medawakanton, and Wapekoota Bands, from time immemorial, occupied the country on which the Pipestone Quarry is situated. The Yankton Sioux from time immemorial occupied the country from the Big Sioux River to the Missouri River (post, pp. 106-118).

V.

The defendants object to the plaintiff's proposed finding No. V upon the ground that the facts there stated are not sustained by the record. As we have said before, all of the tribes objected to the sale of the Pipestone Quarry, but the Indians who claimed and sometimes exacted part of the annuities of the Sissetons were the Yank-

tonais; in fact the Sissetons themselves did not know that they had sold the Pipestone Quarry. The court is therefore requested to find in lieu thereof the following:

From time immemorial all of the different tribes or band of Sioux were accustomed to visit without molestation or fear the Pipestone Quarry for the purpose of procuring stones for their pipes and ornaments. After the treaty of 1851, at nearly every payment of annuities to the Mississippi Sioux, the Yanktonais Indians visited the upper agency and attempted to procure a share of the annuities of the Sisseton and Wahpeton Indians upon the ground that the Mississippi Sioux by the treaties of 1851 had disposed of land in which they had an interest, particularly the Pipestone Quarry, and the Yankton and Teton Tribes also made complaints that the Mississippi Sioux had disposed of lands in which they had an interest, and the Yankton also expressed a desire to enter into a treaty with the Government by which they would receive annuities. In order to settle the trouble the Government entered into a treaty with the Yankton Indians in 1858, and attempted, but unsuccessfully, to enter into a treaty with the Yanktonais (post, pp. 118-125).

VI.

The defendants object to the plaintiffs' proposed finding No. VI upon the ground that the facts in the treaty of 1858 have not been set out

with sufficient fullness and particularity. We realize, of course, that it is not necessary to set out or even refer to treaties, agreements, or acts of Congress in findings of fact, but if it is done at all it should be done so as to show all of the material facts therein. The court is therefore requested to find in lieu thereof the following:

The Yankton Sioux by the treaty of April 19, 1858 (11 Stat. 743), ceded all of the lands owned, possessed, or claimed by them, wherever situated, for the sum of \$1,650,000, payable in 50 years, and reserved for their occupation 400 acres on the Missouri River. The eastern line of their cession was defined as the Big Sioux River from Lake Kampeska to its junction with the Missouri River. Article VIII reads as follows:

The said Yankton Indians shall be secured in the free and unrestricted use of the red pipestone quarry or so much thereof as they have been accustomed to frequent and use for the purpose of procuring stone for pipes; and the United States hereby stipulate and agree to cause to be surveyed and marked so much thereof as shall be necessary and proper for that purpose, and retain the same and keep it open and free to the Indians, to visit and procure stone for pipes so long as they shall desire.

VII.

The defendants object to the plaintiffs' proposed finding No. VII upon the ground that it is immaterial whether the Yankton Indians under-

stood and believed that they had acquired an absolute title to the Pipestone Reservation by Article VIII of the treaty of 1858, and the statement that they claimed the United States gave them the actual title as well as the right of possession is just as immaterial. In fact, as we have stated before, all of the tribes and bands of the Sioux claimed the right to visit the quarry and procure stone for their pipes.

The court is therefore requested to find in lieu thereof the following:

At the instigation of one of their chiefs, Struck-by-the-Ree, the Yankton Indians refused absolutely to enter into any treaty unless some provision was inserted therein recognizing their right to take stones from the Pipestone Quarry for their pipes. Therefore, in order to effect a treaty, Article VIII was added.

VIII.

The defendants offer no objection to the plaintiffs' proposed finding No. VIII.

IX.

The defendants offer no objection to the plaintiffs' proposed finding No. IX.

X.

The defendants offer no objection to the plaintiffs' proposed finding No. X.

XI.

The defendants offer no objection to the plaintiffs' proposed finding No. XI.

XII.

The defendants object to the plaintiffs' proposed finding No. XII upon the ground that the facts stated as preliminary to the quotation of Article XVI of the agreement of December 31, 1892, are not sustained by the record. The alleged encroachments and depredations of white men and other Indians on the Pipestone Quarry had nothing to do with the insertion of Article XVI in the treaty. The Government owned the land in fee and had the right of possession acquired from the Indians who occupied the land, and it had the power to grant the same privilege to any other Indians or to white men to take stone from the quarry, so long as it did not interfere with the right of the Yanktons under Article VIII of the treaty of 1858 to "procure stone for pipe so long as they desire." The reason for the insertion of Article XVI was that the commission who negotiated the agreement of 1892 were impressed with speeches made by certain Yankton Indians in which they claimed that under Article VIII of the treaty of 1858 the Government had granted to the Yankton tribe the possession and fee simple title to the quarry, and in order to settle this question the article was inserted.

The court is therefore requested to insert in lieu of plaintiffs' proposed finding No. XII the following:

The commission which negotiated the treaty of December 31, 1892, ratified by section 12 of the act of August 15, 1894 (28 Stat. 286, 314, 317-319), being impressed by the speeches made by certain members of the Yankton Tribe, in which they claimed that the Government by Article VIII of the treaty of April 19, 1858, gave to the said tribe the fee simple title and possession of the Pipestone Quarry, inserted Article XVI, which reads as follows:

If the Government of the United States questions the ownership of the Pipestone Reservation by the Yankton Tribe of Sioux Indians under the treaty of April 19, 1858, including the fee to the land as well as the right to work the quarries, the Secretary of the Interior shall as speedily as possible refer the matter to the Supreme Court of the United States to be decided by that tribunal. And the United States shall furnish without cost to the Yankton Indians at least one competent attorney to represent the interest of the tribe before the court. If the Secretary of the Interior shall not, within one year after the ratification of this agreement by Congress, refer the question of ownership of the said Pipestone Reservation to the Supreme Court as provided for above, such failure upon his part shall be construed as and shall be a waiver by the

United States of all its rights to the ownership of the said Pipestone Reservation, and the same shall thereafter be solely the property of the Yankton Tribe of Sioux Indians, including the fee to the land. (Rec., pp. 17, 18.)

XIII.

The defendants object to the plaintiffs' proposed finding No. XIII upon the ground that it was a legal impossibility to present Article XVI of the agreement of December 31, 1892, to the Supreme Court for construction. The Secretary of the Interior had presented the matter to the Department of Justice for an opinion and had been informed that it was impossible to comply with the article, and for that reason it was never presented. The court is therefore requested to find in lieu thereof the following:

The Secretary of the Interior having been advised by the Department of Justice that it was impracticable to present Article XVI of the agreement of December 31, 1892, to the Supreme Court for construction, let the matter rest until further action by Congress. (Rec., p. 18.)

XIV.

The defendants object to plaintiffs' proposed finding No. XIV upon the ground that it should have set out part of the matter contained in the plaintiffs' proposed finding No. XIII and the reasons which actuated Congress in refusing to

ratify the agreement of 1899. The court is therefore requested to find in lieu thereof the following:

The Indian appropriation act of June 7, 1897, contained the following clause (30 Stat., 87): "The Secretary of the Interior is directed to negotiate through an Indian inspector for the Yankton Tribe of Indians of South Dakota for the purchase of a parcel of land near Pipestone, Minn., on which is now located an Indian industrial school." Under this act Inspector James McLoughlin negotiated an agreement with the plaintiffs on October 2, 1899, for the transfer of their interest in the Pipestone Quarry to the United States for the sum of \$100,000, and transmitted the same to the Department of the Interior on October 9, 1899, and the agreement was transmitted to Congress by the department on March 24, 1900, and the report of Inspector McLoughlin, the agreement, and the council proceedings were printed in full as House Document No. 535, Fifty-sixth Congress, first session. (Vol. Docs. filed by defendants on June 13, 1912, p. 128.) On March 3, 1903, Senator Quarles, from the Senate Committee on Indian Affairs, submitted an adverse report on the bill ratifying the agreement (S. 1472), which, after quoting Article VIII of the treaty of April 19, 1858, stated that the only title the Yanktons had was in the nature of an easement, and that it was a legal and practicable impossibility for the Secretary of the Interior to have referred Article XVI of the agreement of De-

cember 31, 1892, to the Supreme Court for construction. The bill never became a law and the agreement has never been ratified. (Rec., p. 18.) On April 4, 1906, Senator Gamble, from the Senate Committee on Indian Affairs, submitted a favorable report (S. Rept. 2369, 59th Cong., 1st sess.) on S. 2993, ratifying the agreement of 1892 (Rec., p. 19). This bill also never became a law.

XV.

The defendants object to the plaintiffs' proposed finding No. XV upon the ground that the jurisdictional act should have been set out as heretofore requested by the defendants in lieu of plaintiffs' proposed finding No. I.

CONCLUSION OF LAW.

In lieu of the plaintiffs' proposed conclusion of law (Rec., p. 72) the court is requested to decide as follows:

Upon the foregoing findings of fact the court decides as a conclusion of law that the only interest the Yankton Tribe of Indians of South Dakota has in and to the Pipestone Quarry is the right to visit the said quarry and procure stone for their pipes so long as they desire, and that the Government shall retain so much of the said quarry as shall be necessary and proper for that purpose, and keep it open and free to the said Indians to visit and procure stone for their pipes as aforesaid.

BRIEF.

STATEMENT.

This suit was brought under the provision in the Indian appropriation act of April 4, 1910 (36 Stat., 284), which gave this court jurisdiction to hear and report a finding of fact as to the interest, title, ownership, and right of possession of the Yankton Sioux Indians in and to the Red Pipestone Quarry.

LOCATION OF RED PIPESTONE QUARRY.

The Red Pipestone Quarry is located in the southwest corner of Minnesota, about 15 miles east of the Big Sioux River and about 7 miles east of the South Dakota line. It is situated in sections 1 and 2 of township 106 north, range 46 west, and sections 35 and 36 of township 107 north, range 46 west of the fifth principal meridian, and contains 648.2 acres, more or less. (Rec., pp. 11, 12, 25.)

THE SIOUX OF THE MISSISSIPPI, COMPOSED OF THE SISSETON, WAHPETON, MEDAWAKANTON, AND WAHPEKOOTA BANDS, WERE FROM TIME IMMEMORIAL THE OWNERS BY THE ORDINARY INDIAN TITLE OF OCCUPANCY OF THE LANDS ON WHICH THE PIPESTONE QUARRY STANDS.

As early as the year 1803 the Sioux or Dakotah Indians were divided geographically into two general groups—the Sioux of the Mississippi, composed of the Sisseton, Wahpeton, Medawakanton,

and Wahpekoota Bands—occupying the country between the Mississippi and the Big Sioux Rivers, and the Sioux of the Missouri, occupying the country west of the Big Sioux River and on both sides of the Missouri River, composed of the Tetons, the Yanktons of the south, and the Yanktons of the north, afterwards known as the Yanktonais; the Southern Yanktons, the plaintiffs in this suit, occupying the country between the Jacques, now known as the James River, and the Big Sioux and the Des Moines Rivers.

Concerning the location of the plaintiffs, the Yanktons of the south, and the Sioux of the Mississippi from whom the United States acquired the land on which the Pipestone Quarry is located, Capts. Lewis and Clark in the history of their expedition across the continent in 1803 say:

Almost the whole of that vast tract of country between the Mississippi, the Red River of Lake Winnipeg, the Saskatchewan, and the Missouri is loosely occupied by a great nation, whose primitive name is Darcota, but who are called Sioux by the French, Sues by the English. Their original seats were on the Mississippi, but they have gradually spread themselves abroad and become subdivided into numerous tribes. Of these, what may be considered as the Darcotas are the Mindawarcarton or Minowakanton, known to the French by the name of the Gens Du Lac, or People of the Lake. Their residence is

on both sides of the Mississippi, near the Falls of St. Anthony, and the probable number of their warriors about 300. Above them, on the river St. Peters, is the Wahpatone, a smaller band of nearly 200 men; and still farther up the same river, below the Yellow Wood River, are the Wahpatootas, or Gens de Feuilles, an inferior band of not more than 150 men; while the sources of the St. Peters are occupied by the Sisi-toones, a band consisting of about 200 warriors.

These bands rarely, if ever, approach the Missouri, which is occupied by their kinsmen, the Yanktons and the Tetons. The Yanktons are of two tribes—those of the plains, or rather of the north, a wandering race of about 500 men, who roam over the plains at the heads of the Jacques, the Sioux, and the Red Rivers; and those of the south, who possess the country between the Jacques and the Sioux Rivers and the Desmoines; but the bands of Sioux most known on the Missouri are the Tetons.

* * * The Sioux themselves, though scattered, meet annually on the Jacques, those on the Missouri trading with those on the Mississippi. (Vol. 1, pp. 204–206.)

George Catlin, the artist and traveler, the first white man to visit the Pipestone Quarry, gives a very interesting account of his visit in 1836 to this celebrated place in his book on the Manners, Customs, and Conditions of the North American Indians, volume 2, pages 160–206.

While en route Mr. Catlin and his English companion were forcibly stopped by Sioux Indians at Traverse des Sioux on the St. Peters or Minnesota River, who informed them that they could go no farther; that the Red Pipe Stone Quarry had been given to them by the Great Spirit and that no white man should profane its sacred precincts by his presence. They also believed that he was an agent of the Government sent out to examine the quarry with a view to gaining possession of it. However, in defiance of their protests and threats, Mr. Catlin proceeded on his way to the quarry, where he remained for some time studying its physical conformation and surroundings (pp. 166, 172-176). While there he obtained some specimens of the stone which he carried away and of which he had an analysis made (pp. 205-206).

The place where Mr. Catlin was stopped by the Indians was one of the principal villages of the Sissetons and the place where the treaty of July 23, 1851, was negotiated with the Sisseton and Wahpeton Sioux, which is generally spoken of as the treaty of Traverse des Sioux (10 Stat. 949). Mr. Catlin (p. 169) said:

Amongst the Sioux of the Mississippi, *who live in the region of the Red Pipe Stone Quarry*, I found the following and not less strange tradition of the same subject. "Many ages after the red men were made, when all the different tribes were at war, the Great Spirit sent runners and

called them all together at the "Red Pipe." He stood on the top of the rocks, and the red people were assembled in infinite numbers on the plains below. He took out of the rock a piece of the red stone and made a large pipe; he smoked it over them all; told them it was part of their flesh; that though they were at war, they must meet at this place as friends; that it belonged to them all; that they must make their calumets from it and smoke them to him whenever they wished to appease him or get his good will; the smoke from his big pipe rolled over them all, and he disappeared in its cloud; at the last whiff of his pipe a blaze of fire rolled over the rocks and melted their surface. At that moment two squaws went in a blaze of fire under two medicine rocks, where they remain to this day and must be consulted and propitiated whenever the pipestone is to be taken away." [Italics ours.]

In 1838 Mr. Nicollet was employed by the Bureau of Topographical Engineers of the United States Army to collect additional materials for a map of the United States then in course of preparation, and the result of his labors was published as Senate Document No. 237, Twenty-sixth Congress, second session (serial No. 380). His authority for making the investigations is set out in the introduction, and his map will be found between pages 96 and 97.

Mr. Nicollet visited the Pipestone Quarry in 1838, two years after Mr. Catlin, and after describing some old Indian fortifications which he found in the vicinity, he said:

But to return to the Red Pipestone Quarry. The Indians of all the surrounding nations made a regular annual pilgrimage to it unless prevented by their wars or dissensions. *The quarry is on the lands of the Sissiton Band of Sioux* (p. 15). [Italics ours.]

Mr. Nicollet (p. 18) speaks of certain information as to copper earth given him "by Sleepy-eye, the Chief of the Sissitons, who accompanied me during this excursion (p. 18). He also gives (p. 17) an analysis of the pipestone by Prof. Jackson, of Boston, who applied to it the name of "catlinite," after Mr. Catlin.

The map of Mr. Nicollet shows the country of the Yankton Sioux in 1838 as between the Missouri and the Jacques or James Rivers, Dakota (p. 96).

Alexander Ramsey, governor and *ex officio* superintendent of Indian Affairs for the Territory of Minnesota, in a report to the Commissioner of Indian Affairs, dated October 13, 1849 (Senate Executive Documents, Vol. 2, No. 1, Pt. 2, Serial 550, pp. 1005-1036), gives a very comprehensive and accurate account of the different tribes or bands composing the Great Sioux or Dakota Nation and pays particular attention to the boun-

daries of the country inhabited by each tribe or band; in fact, so much stress is laid upon this subject that the conclusion is irresistible that this information was furnished to the Commissioner of Indian Affairs with special reference to the making of the treaties of July 23 and August 5, 1851, known as the treaties of Traverse de Sioux and Mendota, with the four bands of the Mississippi Sioux.

Speaking of the Sissetons (p. 1021) he says:

The Si-si-t'wans do very little at cultivating the soil, but depend mainly for subsistence upon hunting.

This band claims the custody of the famous *waken* the red pipestone quarry near the Coteau des Prairies, toward the river Jacques.

Concerning the Yanktons (pp. 1022-1023) he says:

This band is another powerful division of the Dacotah Nation. Their appellative is correctly written Ihank-t'wans, instead of Yanctons (pronounced E-hawn-k-t'wans, compounded from ihanke, further end, and tonwan) being the "people of the further end."

* * * *

The country of the Ihank-t'wans is next beyond that of the Si-si-t'wan sub-tribe, commencing on the western side of Lake Traverse and extending west of the river Jacques to the Missouri, above old Fort

Lookout, and to the borders of the lands of their scions, the Ihank-t'wan *ahs.* * * * With the exception of the suffix *nan*, the name of this band is the same exactly as the previous one. The addition *nan* is the diminutive *little*, or less; so that the band may be designated as the "lesser people of the further end," or the "Little Ihank-t'wans," commonly termed by the whites *Yanctonies*—E-hawn-k'wawn-nah, it is said, being the true Dacotah pronunciation of their name.

Their lands are all that range of country west of the Ihank-t'wans, nearly to the White Earth river, the boundary of this territory to the northwest, including the salt-water region. Lewis and Clark described them as "Yanctons of the Plains, or Big Devils, who rove on the heads of the Sioux, Jacques, and Red Rivers, and number about five hundred men." [Italics ours.]

This statement concerning the Yanctonais is important as showing that it was evidently the Yanktonais who were referred to both as Yanktons and Yanktonais by different Indian agents after the treaty of 1851 as creating disturbances at the annual payments of annuities to the Mississippi Sioux on the ground that they had disposed of land belonging to them, meaning the Pipestone Quarry, in which all of the Sioux were interested in having the right to obtain stone for their pipes and ornaments. It is the Yankton Sioux, called

in earlier times Southern Yanktons to distinguish them from the Northern Yanktons or Yanktonais, who are the plaintiffs in this suit.

Kintzing Pritchette, special agent of the Indian Office, in a report to the Commissioner of Indian Affairs, dated October 15, 1857 (Senate Docs., 1st sess., 35th Cong., Serial No. 919, pp. 387-396), speaking of the dissatisfaction among the bands and tribes of Sioux, and the practice of the Government in dealing with separate bands for lands in which the whole nation was concerned (p. 394), said:

The sale of the Red Pipestone Quarry is a fruitful source of discord among them, it always having been considered the common property of the whole nation, which no part of it had the right separately to dispose of.

The Sissetons who were in occupation of the country in which it lies, and who were parties to the treaty of 1851, insist that it was never their intention to cede it. By retaining this in the hands of the Government and distributing at proper times sufficient of the stone for the general use, they might ultimately be reconciled to its dispossession. [Italics ours.]

Inspector McLaughlin, the oldest employee of the Indian Office in length of service, and the author of the valuable publication "My Friend the Indian," probably the best informed man on the subject, has made an exhaustive and careful in-

vestigation of the claim of the Yanktons to the Pipestone Quarry, the result of which is contained in his report to the Secretary of the Interior dated March 15, 1912 (Rec., pp. 11-21), with maps attached, and we may say that this report has been recognized and extensively used by the attorney for the plaintiffs in his brief. Inspector McLaughlin, after referring to the fact that both the Yanktons and the Santees received certain allowances under treaty on the Missouri River, said (Rec., p. 15):

From this it would appear that the Santees had certain rights as far as the Missouri River, while I have been unable to find anything to show that the Yanktons ever occupied any country east of the Big Sioux. "Santee" is but another name for the Medawakanton, Wahpekoota, Sisseton, and Wahpeton Bands of Sioux, or the Sioux of the Mississippi, and being short and easy of pronunciation was often used in place of the longer name. It is so used in another place in this report (p. 13).

See also map No. 1 attached to his report (Rec., p. 22), which shows the Sissetons and Wahpetons in 1849 occupying the country around the Pipestone Quarry.

The map prepared by the Land Office and filed in the case of the *Sisseton and Wahpeton Indians v. The United States* (42 C. Cls., 416; 208 U. S., 561), in which the ownership of the Pipestone Quarry was not in question, shows that the Sisse-

ton subband of White Lodge occupied lands about the quarry.

A number of prominent members of the bands composing the Mississippi Sioux were examined in this case under the rules of the court and all of them testified, either from personal knowledge or from tradition, that the Sioux River was the western boundary of the Minnesota Sioux.

Eli Abrahams (Rec., pp. 27-29) testifies (p. 28) that he heard the old men of the tribe say that the western boundary was Crooked River, now known as the Sioux River.

Napoleon Wabashaw (Rec., pp. 29, 30) testified (p. 29) that he was told by his father, Chief Wabashaw, that the Crooked or Sioux River was the western boundary. (His father, from whom he got this information, was the celebrated Chief Wabashaw, who remained friendly to the whites in the Minnesota massacres of 1862 and 1863.)

Thomas Whipple (Rec., pp. 30-32) testified (p. 31) that he heard from his grandfather and parents that the Indians always claimed as far as Crooked or Sioux River.

Thomas K. West (pp. 32-34) testifies (p. 33) that he heard the old men of the tribe say that the land belonging to the Minnesota Sioux extended to the Sioux River. He also testified that at the time the treaty of 1851 was made the Sissetons and Wahpetons of White Lodge's band roamed about the country around the Pipestone Quarry, and that he heard they planted corn on the Sioux

River at a place now called Eagan (near Flaudreau, S. Dak.).

Joseph P. Hillers (Rec., pp. 34-36) testifies (p. 35) that he heard his father and other old men of the tribe say that the western boundary of their country was the Big Sioux River, and that the land west of the Pipestone Quarry belonged to them, and that the Wahpetons and a small band of the Sissetons roamed the country about the Pipestone Quarry.

The Rev. John Eastman (pp. 36-38) testifies (p. 37) that different old men of the tribe told him, and it was also a tradition of the tribe, that the Sioux River was the western boundary of the Minnesota Sioux, and that Lean Bear's band of Sissetons and Wahpetons lived near the Pipestone Quarry, and that he himself had visited their village, and that he knew they lived there before 1851, because an uncle who had married into the band told him so. That Lean Bear was a chief of a sub-band of Limping Devil, and was killed in the Lake Shetek massacre of 1862 (see Heard's History).

Thomas A. Robertson (pp. 38-41), the best interpreter the Sioux ever had and the man best informed in their history and tradition, testifies (p. 39) that prior to and at the date of the treaty of 1851 Limping Devil's band, sub-bands of which were under White Lodge and Lean Bear, composed of Sissetons and Wahpetons, lived near the

Pipestone Quarry. He says the Sioux River was the western boundary of the Minnesota Sioux.

Joseph R. Brown (Rec., pp. 41-42), son of Gen. Joseph R. Brown, who was for a number of years agent of the Minnesota Sioux and prominent in the early history of Minnesota, testifies (p. 42) that he was told by prominent members of the tribe that the Sioux River was the western boundary of the Minnesota Sioux.

FROM TIME IMMEMORIAL ALL OF THE NORTHWESTERN TRIBES EAST OF THE ROCKY MOUNTAINS VISITED THE PIPESTONE QUARRY FOR STONES FOR THEIR PIPES.

Catlin from his investigations of this subject was convinced that the Indians of all the northwestern tribes from time immemorial were in the habit of making periodical visits to the Pipestone Quarry for pipestones. The legend current among the tribes generally was that the Great Spirit had given the Pipestone Quarry to all of the Indians, who were to have the privilege of visiting it without fear of violence and of procuring all the stone necessary for their pipes. The legend is almost identical with that current among the Sioux (ante, pp. 109, 110) which has been heretofore given:

Here (according to their tradition) happened the mysterious birth of the red pipe, which has blown its fumes of peace and war to the remotest corners of continent;

which has visited every warrior and passed through its reddened stem the irrevocable oath of war and desolation. And here also, the peace-breathing calumet was born, and fringed with the eagle's quills, which has shed its thrilling fumes over the land and soothed the fury of the relentless savage.

The Great Spirit at an ancient period, here called the Indian nations together, and standing on the precipice of the red pipe-stone rock broke from its wall a piece and made a huge pipe by turning it in his hand, which he smoked over them, and to the north, the south, the east, and the west, and told them that this stone was red; that it was their flesh; that they must use it for their pipes of peace; that it belonged to them all; and that the war club and scalping knife must not be raised on its ground. At the last whif of his pipe his head went into a great cloud, and the whole surface of the rock for several miles was melted and glazed; two great ovens were opened beneath, and two women (guardian spirits of the place) entered them in a blaze of fire; and they are heard there yet (Tso-mec-cos-tee and Tso-me-cos-te-won-dee), answering to the invocations of the high priests or medicine men, who consulted them when they are visitors to this sacred place. (Manners, Customs, and Condition of the North American Indians, Vol. II, pp. 163-164.)

It was this legend which suggested to Longfellow his celebrated poem of Hiawatha, which begins:

On the Mountains of the Prairie,
On the great Red Pipe-stone Quarry,
Gitche Manito, the mighty,
He the Master of Life, descending,
On the red crags of the quarry
Stood erect, and called the nations,
Called the tribes of men together.

See notes to page 235, Vol. II, edition of 1875, referring to Mr. Catlin's work and the above legend.

Mr. Catlin (note to p. 168 of Vol. II, Manners, Customs, and Condition of the North American Indians) says:

I have often conversed with Gen. Clark, of St. Louis, on this subject, and he told me explicitly and authorized me to say it to the world, that every tribe on the Missouri told him they had been to this place, and that the Great Spirit kept the peace among his red children on that ground, where they had smoked with their enemies.

The Gen. Clark who made the above statement, was the Capt. Clark who accompanied Capt. Lewis in his expedition from the mouth of the Missouri River to the Pacific Ocean, and afterwards held many prominent positions, among which that of superintendent of all the western and northwestern tribes. (Introduction to Journal of Lewis and Clark.)

Mr. Catlin says that he also talked with a number of the chiefs of the northwestern tribes, who

told him that they had visited the Pipestone Quarry before the Sioux had driven them off and prohibited their visits, and gives the conversations with a number of them on this subject (pp. 169, 170, 171). He further says that while the redstone pipes are found in almost every tribe on the North American continent, he believes they were all brought from the Red Pipestone Quarry of Minnesota, and challenges the world to prove that the stone for these pipes is produced in any other place. That within the past few years (Mr. Catlin visited the quarry in 1836), probably through instigation of the whites, "the Sioux have laid entire claim to this quarry; and as it is in the center of their country, and they are more powerful than any other tribes, they are able successfully to prevent any access to it" (p. 167 and note).

Mr. Nicollett, who visited the quarry in 1838, says:

The Indians of all the surrounding nations make regular annual pilgrimages to it, unless prevented by their wars and dissensions. The quarry is on the land of of the Sisseton Tribe of Sioux (Senate Doc. 237, 26th Cong., 2d sess., serial 380, p. 15).

Superintendent Cullen, of the northern superintendency (Senate Doc., 1st sess., 35th Cong., serial No. 919, pp. 340, 341), concerning the common

interest of all the Sioux Indians in the Pipestone Quarry, in 1857, said :

The “ Great Pipestone ” Quarry, the Indian Mecca, which, by the treaty of 1851, is within the limits of the ceded land, seems to be the source of great misunderstanding among all these Indians, and some provision should be made by the Government to reserve from sale or preemption this spot, which for generations they have held sacred for the purposes which the name indicates; and as the material is in universal use among them for manufacturing their pipes, they consider it more valuable than all the lands they possess.

Kintzing Pritchette, special agent of the Indian Office (Id., p. 394), in a report for the same year, said :

The sale of the Red Pipestone Quarry is a fruitful source of discord among them, it always having been considered the common property of the whole nation, which no part of it had the right separately to dispose of.

Inspector McLaughlin, of the Interior Department, in his report to the Secretary of the Interior on this claim, said (Rec., p. 21) :

The truth is that *all* of the Sioux bands claimed, and have had from time immemorial, an equal right to use this Pipestone Quarry. I assert this with entire confidence, both from the official record and my own personal knowledge derived from 49 years acquaintance with the Sioux, 40

of which has been continuous service among the Indians, 24 of the 40 years being spent with the Sioux of the plains and those of the Mississippi. All the older members of the Sioux Tribe will testify to the correctness of this view.

The conclusion of Inspector McLaughlin as to the right from time immemorial of the members of the Sioux Nation to visit the quarry and take all the stone they needed for pipes was borne out by testimony taken afterwards under the rules of the court on behalf of the defendants.

Thomas K. West (Rec., p. 34) said that it was his understanding that all the Indians who speak the Sioux language had the right to come to the Red Pipestone Quarry to get stone for their pipes.

Joseph P. Hillers (Rec., p. 36), said:

It was my understanding that all people speaking the Sioux language had the right to go there and take out the stone they wanted and use them as they saw fit.

The Rev. John Eastman testifies (Rec., p. 37) to the same effect.

Thomas A. Robertson testifies (Rec., p. 40) that—

All the tribes speaking the Sioux and the Dakota language had the privilege of going there and getting all the stone they needed for pipes and ornaments.

When asked how long back this custom dated he replied: "As far back as I can remember (he

was 75 years of age on July 18, 1915), and I think for 100 and perhaps 200 years." He further stated that all the Sioux still visited the Pipestone Quarry to procure stone for pipes and ornaments.

The attorney for the plaintiff has examined five Yankton Indians as to the ownership of the Pipestone Quarry (their testimony will be found on pp. 43 to 52 of the record), and he has utterly failed to establish any ownership by the Indian right of occupancy in the Yankton Tribe of the land on which the Pipestone Quarry stands. The utmost that he has been able to show was that an Indian chief by the name of Strike-the-Ree (given in the treaties as Struck-by-the-Ree) refused to sign the treaty of 1858 until a provision was inserted by which the Yankton Indians were to have the right to visit the Pipestone Quarry and take all the pipestones they needed.

His first witness, Red Horse, giving an account of the refusal of Struck-by-the-Ree to sign the treaty, said:

He put his finger on his breast and said "The Pipestone Quarry belongs to me." He said: "The Santees sold the Pipestone Quarry to me, and if the Great Father will give the Pipestone to me in the treaty, I will sign it, otherwise I will not." He said: "If they will preserve the Pipestone Quarry for me, I will sell them the rest of the country." (Rec., p. 44.)

The Santees, to whom this witness refers as having sold the Pipestone Quarry to the Yank-

tons, were the Mississippi Sioux, to whom this name, meaning eastern Sioux, was applied by the Sioux living farther west. It is needless to add that there was no such cession or gift by the Mississippi Sioux to the Yanktons.

And so it is with the other witnesses examined by the attorney for the plaintiff. All of them have dwelt upon this incident of Struck-by-the-Ree refusing to sign the treaty of 1858 until the provision concerning the Pipestone Quarry was inserted. None of them really claim any title by occupation to the quarry.

CESSION OF THE PIPESTONE QUARRY.

The Sisseton and Wahpeton Bands of the Mississippi Sioux, by the treaty of July 23 1851 (10 Stat., 949), commonly known as the treaty of Traverse des Sioux, ceded all of their lands in the State of Minnesota to the United States, and the Medawakanton and Wahpakoota bands, by the treaty of August 5, 1851 (10 Stat., 954), known as the treaty of Mendota, ceded the same lands which had been held in common by the four bands of Mississippi Sioux, and reserved for their future occupation a strip of land ten miles wide on both sides of the St. Peters or Minnesota River. The consideration for these treaties, after the payment of certain sums for specified purposes, was to be placed in the Treasury of the United States at 5 per cent, to be paid to the said bands in 50 annual installments, thereby wiping

out the entire consideration, principle and interest.

The Red Pipestone Quarry, above described, was embraced within the lines of this cession.

After the treaty of 1851 the other tribes of Sioux living farther west saw the Minnesota Sioux receiving annuities, goods, and other advantages every year, while they received nothing. The tradition of the nation was that at a very early period all of the Sioux had lived together on the Mississippi River, and that all had an interest in the ceded lands, and this was particularly true of the Pipestone Quarry, which they had all frequented even after their separation and occupation of different hunting grounds. They were therefore dissatisfied with the payments of annuities to the Mississippi Sioux alone. The only Indians, however who actively interfered at the payments and insisted in sharing in them were the Yanktonais and the Cut-Heads, a branch of the Yanktonais. Several officials in charge of these Indians referred to them in their reports for the years 1856 and 1857 as Yankton Indians. In fact they were called Northern Yanktons by Lewis and Clark as already stated above, to distinguish them from the Southern Yanktons, the plaintiffs in this case. That they were Yanktonais, however, was explained by the superintendent of the northern superintendency, Mr. Cullen, in his report to the Commissioner of Indian Affairs for the year 1857. This was fur-

ther explained by the reports for 1858, where an effort was made to settle the difficulties between the Yanktonais and the Sissetons by inducing them to enter into a treaty and to give them money and goods as an inducement to enter into negotiations.

Superintendent Huebschmann, of the northern superintendency, in a report to the Commissioner of Indian Affairs, September 30, 1856, after speaking of delays in carrying out the treaty of 1851 (Senate Docs., 3d session, 34th Congress, No. 875 Serial, p. 589) said:

The Indians living farther west, the Yanktoan Sioux, have as yet made no treaty with the United States and receive no annuity. They have sometimes visited the payments to the Sissitoans and Wahpatoans and attempted to make disturbances by claiming that their country had extended to the Yellow Medicine River, and that, consequently, a part of the money paid for the Sioux purchase belonged to them. At other times these Indians have sent messages to the officers of the department, which show their good sense. They desire to make a treaty with the United States and to receive annuities, and have urgently requested that some ploughing be done for them, and they be furnished with some hoes and other agricultural implements. If Congress should deem it premature to purchase their land, it would be very desirable that funds should be provided to break some lands for them

at one or more of their villages, and to furnish implements, if thought proper, with the distinct understanding that these amounts be considered as advance payments at the conclusion of a treaty hereafter.

Superintendent Cullen in a report to the Commissioner of Indian Affairs, July 26, 1857 (Senate Docs., 1st sess., 35th Cong., serial No. 919, pp. 371, 372), said:

I will here state in this connection that in a council with some of the Yanctons, those who came to Yellow Medicine anticipating the payment, and exact the contribution they make of the Si-si-tons; on the 19th instant they expressed themselves favorable to making a treaty. I told them I would report to you their feelings. I am of the opinion it will be necessary to adjust the matters of difference between the Yanctons and Si-si-tons, the Yanctons claiming that the latter have, in the treaty of 1751, sold the lands belonging to the former and particularly claiming the "Pipestone Quarry"; and as these matters should be adjusted so as to prevent future troubles at subsequent payments, I would here call your attention to this subject.

Agent Flandrau, in a report to the Commissioner of Indian Affairs September 24, 1857 (*id.*, p. 347), said:

It will be absolutely necessary that some measures should be taken to prevent the

Yanctons from interfering in the payments of the Sisitons and Wahpetons.

The reason of their coming to these payments, and the ground of their claim, is as follows: When the treaty of Traverse des Sioux was made, the Sisitons and Wahpetons were called upon to sell certain lands, which they admitted did not belong to them, and declined selling, and were told they were only to sell *their right* in the lands. This they consented to. These lands belonged to the Yanctons, or they had some claim on them; and the lands are now regarded as ceded lands, and the Yanctons claim a right to a share in the annuities, and every payment that has been made has been protracted and disturbed by the presence of these Indians.

I recommend that a treaty be made with them for the purchase of their lands west of the "Big Sioux River," and their being placed on a reservation, or removed north and west. The country west of the "Big Sioux" will soon be demanded by the whites for settlement, and the sooner it is purchased the less trouble the white will have to get rid of the Indians and take possession of it. I regard it as necessary to the prosperity of our Indians that the influence of these Yanctons should be withdrawn from them; and the best way to do it is to put the Yanctons under annuities, and settle the difficulties that exist between them.

Superintendent Cullen, in his report to the Commissioner of Indian Affairs September 28, 1857 (id., 340, 341), said:

The Yanctonais Sioux, who occupy the country to the north of the Big Sioux River and west of the present Sioux reserve, are anxious to sell their lands to the Government and make a treaty. I would recommend that steps be taken as early as practicable in the spring to make this treaty, as their lands lie in the territory which, at the next session of Congress, will probably receive a separate organization; and as the southern portion now open for settlement, will receive the emigration which is already tending towards the further west, it would be advisable, for the safety and peace of the settlers in this new country, that these Indians should be satisfied and retained in subjection.

These Indians are the ones who interfere annually with the payments at the Upper Sioux Agency under the pretense of the claim that they make, before referred to, against the Sisitons, and, besides, they are exceedingly averse to any whites ever crossing their lands until some treaty is made with them. They number four hundred and fifty lodges, besides about two hundred lodges of what are known as the Cut-head Yanctonais, and cover a vast extent of country and the valleys of several large streams, the principal one being the James

River, which empties into the Missouri and is represented as navigable for a considerable distance from the mouth.

The "Great Pipestone" Quarry, the Indian Mecca, which by the treaty of 1851 is within the limits of the ceded land, seems to be the source of great misunderstanding among all these Indians, and some provision should be made by the Government to reserve from sale or preemption this spot which for generations they have held sacred for the purposes which the name indicates; and as the material is in universal use among them for manufacturing their pipes, they consider it more valuable than all the lands they possess. [*Italics ours.*]

Special Agent Kintzing Pritchette, in a report to the Commissioner of Indian Affairs October 15, 1857, after pointing out the dissatisfaction growing out of dealings with the tribes or bands instead of the whole nation, which caused the tribes or bands not provided for by treaties to think they were entitled to part of the annuities (*Id.*, p. 394), said:

That this is in part true is evidenced by the fact that the Yanctons annually demand from the Sisetons a share of their annuity, who frequently divide with them their distributive portion of goods.

The sale of the Red Pipestone Quarry is a fruitful source of discord among them, it always having been considered the common

property of the whole nation, which no part of it had the right separately to dispose of.

The Sisetons, who were in occupation of the country in which it lies and who were parties to the treaty of 1851, insist that it was never their intention to cede it. By retaining this in the hands of the Government and distributing at proper times sufficient of the stone for the general use they might ultimately be reconciled to its dispossession. * * *

The Yanctons have expressed a wish to treat for the sale of a portion of their country, and the Sioux for a part of their reserve. * * *

Superintendent Cullen in his report to the Commissioner of Indian Affairs, September 30, 1858 (Message and Documents, 1858, 1859, pt. 1, p. 406), said:

The Yanctonnais, with a strong show of justice, claimed an interest in the lands sold under the treaty of 1851 at Traverse des Sioux, and they made frequent applications to the officers of Government for a compensation for their interest in the said land. After being told by yourself that their demands would be again presented to the department, and that the response would be made to them the succeeding (past) summer, they, without waiting until the time proposed for your interview with them had arrived, assaulted and drove from their houses many peaceful citizens located east of the Sioux River,

destroying their property and burning their houses. Subsequent to this they were met by an agent of Government with an invitation to a friendly council, for the purpose of discussing their claims and making remuneration for the same, and they absolutely refused any such meeting because the Tetons and other bands residing west of the Missouri could not be present.

A second message was sent to them through mixed bloods of their own bands with the same result and the same reply—all, in my opinion, to gain time for a concentration of their numbers next spring, when the buffalo will provide them with meat for their support while operating against the whites. *These Indians occupy generally the valley of the James and the country between that and the Missouri,* and they, therefore, are out of the range of any of the forts, and can reach our white settlements in the Sioux Valley without any interruption whatever. The failure to pursue and punish Inkpaduta and his band for the wholesale murder of our citizens at Spirit Lake has confirmed them in the belief that the Government is weak and can not punish Indian aggressions except through the assistance of the Indians; hence their expectation of reclaiming and holding the country along the Sioux *and extending to the Pipestone Quarry, all of which they pretend to own.* [Italics ours.]

Special Agent Kintzeng Pritchette in a report to the Commissioner of Indian Affairs, August 22, 1858 (id. pp. 420, 421), said:

Beside the dissatisfaction between the Yanctonnais and Se-sec-toans, the Yanktons are at variance in regard to the late treaty, as I was informed by one of their chiefs, who visited me with a party of his people while encamped at Kampeska Lake. He declared that he was no party to that treaty, and dissented from its provisions.

The friendly disposition of the Tetons on both sides of the Mississippi is doubtful.

One of the bands of that nation, to whom presents are directed to be bestowed by your instructions to the superintendent of the 8th of July last—to wit, the “Sans Arcs”—I was informed by the Yanctonnais, are in open hostility against the United States.

Superintendent Cullen, in a communication to Special Agent Pritchette, July 9, 1858 (id., p. 421), said:

SIR: In accordance with a communication of the Commissioner of Indian Affairs of June 29, informing me you had been appointed a special agent of the Indian Department to act in regard to matters connected with the Yanctonnais Indians, now on their way toward the Yellow Medicine, for the purpose of interfering with the payment of annuities to the Se-see-toans and Wah-pay-toan Sioux Indians; and that

you would report yourself to me for duty, you are hereby instructed to proceed, without delay, to meet the Yanctonnais Indians and make known to them that the Government is engaged in initiating measures in their behalf, and that goods and other articles are now being purchased which will be distributed among them during the present season.

The efforts of Special Agent Pritchette to reach an agreement with the Yanktonais Sioux to settle their differences with the Mississippi Sioux has been fully set out in the minutes of councils held with the Yanctonnais July 29 and 31, 1858 (*id.*, pp. 422-426).

It is therefore perfectly clear, as we said before, that it was the Yanctonnais who actually interfered at the payments of annuities to the Minnesota Sioux, although it is evident that the Yanktons and all of the other Sioux not included in the treaties of 1851 were dissatisfied, especially with the sale of the Pipestone Quarry. The same conclusion was reached by Inspector McLaughlin in his report to the Commissioner of Indian Affairs on this claim, March 15, 1912 (*Rec.*, p. 19):

The Yanktons were not the only Indians, nor the principal ones, who objected to the ceding of the Sisseton and Wahpeton lands without their consent. Certainly they did not do so after the Sisseton payment of 1857, for in the spring of 1858 they ceded their own land without the consent of the

other Sioux Bands. The Yanktonais resented this as vehemently as they did the Sisseton and Wahpeton cession and besought their agent, A. H. Redfield, at Fort Union, in September, 1858, to write their Great Father to stop the treaty. (Ind. Comr. Rpt., 1858, p. 85.) The Yanktonais were the hardest and most persistent of the "kickers," and they continued their opposition as late as 1861, or until the terrible affair of New Ulm in 1862, which changed the whole aspect of affairs with respect to the four bands of Santee Sioux; their treaties were abrogated, their payments were stopped, and the Indians themselves were driven from their ancient habitations. The Yanktonais were a proud and haughty people and rejected all overtures to placate them. (Ind. Comr. Rpt., 1861, p. 72.) The Yanktons, on the other hand, who by reason of their environment and necessities had grown to be a peaceable and an orderly people, were friendly to the Government and not given to obstruction, certainly not after their treaty of 1858.

THE YANKTON CESSION OF 1858.

The Yankton Sioux, by the treaty of April 19, 1858 (11 Stat., 743), ceded all of the lands owned, possessed, or claimed by them wherever situated, for the sum of \$1,650,000, payable in 50 years, and reserved for their occupation 400,000 acres on the Missouri River. The eastern line of their cession was defined as the Big Sioux River from

Lake Kampeska River to its junction with the Missouri River.

At the instigation of one of their chiefs, Struck-by-the-Ree, the Yanktons refused absolutely to enter into any treaty unless some provision was inserted therein recognizing their right to take stones from the Pipestone Quarry for their pipes. Therefore, in order to effect a treaty, Article VIII was added, which stipulated that—

The said Yankton Indians shall be secured in the free and unrestricted use of the red pipestone quarry, or so much as they have been accustomed to frequent and use for the purpose of procuring stone for pipes; and the United States hereby stipulate and agree to cause to be surveyed and marked so much thereof as shall be necessary and proper for that purpose, and retain the same and keep it open and free to the Indians to visit and procure stone for pipes so long as they desire.

This clause of the treaty was simply a recognition of the right of the Yanktons (which they and other Sioux bands or tribes had exercised from time immemorial) to take stones from the Pipestone Quarry "for their pipes." It gave them no title or interest in the land or quarry, but simply a right in the nature of an easement to "procure stone for their pipes so long as they desire."

After this recognition of their right to procure stone, the Yanktons very industriously and per-

sistently asserted their claim to the land on which the Pipestone Quarry was situated, and from time to time demanded of the Government payment therefor. This right they had never asserted before and did not assert in their treaty. Their claim was no greater than that of any of the other Indian tribes who resorted to the quarry for stones. It was not nearly so great as that of the Mississippi Sioux, who occupied the land and sold it to the United States under a misapprehension that it had been reserved for their use.

THE SURVEY OF THE PIPESTONE QUARRY.

In pursuance of Article VIII of the agreement of 1858 the Pipestone Quarry was surveyed and marked and a diagram and field notes filed and recorded in the General Land Office and in the office of the surveyor general of Minnesota, and in February, 1860, copies were transmitted to the United States surveyor general of that State for his information when surveying public lands therein. The reservation, however, was surveyed with other public lands in that vicinity, upon which the Commissioner of the Land Office directed the surveyor general to locate the reservation on the official plat in his office from the field notes and plat of the original survey, or, if impossible, to direct a resurvey so that the reservation might be located and described upon the official plats. In pursuance of these instructions the surveyor general caused a resurvey of the quarry

to be made, and the premises as resurveyed are substantially the same as the lines of the original survey. (H. R. Doc. 535, 56th Cong., 1st sess., p. 31; *United States v. Carpenter*, 111 U. S., 347.) After the survey of the reservation as public lands, one August Cluensen, on July 15, 1871, located a quarter section of Louisiana College scrip, and on May 15, 1871, a patent was issued to him for said lands. All of his rights thus acquired were subsequently transferred to one Herbert M. Carpenter. Upon a suit in equity instituted by the Government the patent was declared invalid. (*United States v. Carpenter*, 111 U. S., 347.)

THE YANKTON AGREEMENT OF DECEMBER 31, 1892.

The agreement of December 31, 1892, with the Yankton Sioux was ratified by section 12 of the act of August 15, 1894 (28 Stat., 286, 314, 317, 318, 319), in which the agreement is set out in extenso, Article XVI, of which reads:

If the Government of the United States questions the ownership of the Pipestone Reservation by the Yankton Tribe of Sioux Indians, under the treaty of April 19, 1858, including the fee to the land, as well as the right to work the quarries, the Secretary of the Interior shall as speedily as possible refer the matter to the Supreme Court of the United States, to be decided by that tribunal. And the United States shall furnish, without cost to the Yankton Indians, at least one competent attorney to repre-

sent the interests of the tribe before the court.

If the Secretary of the Interior shall not, within one year after ratification of this agreement by Congress, refer the question of the ownership of the Pipestone Reservation to the Supreme Court, as provided for above, such failure upon his part shall be construed as and shall be a waiver by the United States of all rights to the ownership of the Pipestone Reservation, and the same shall thereafter be solely the property of the Yankton Tribe of the Sioux Indians, including the fee to the land.

The question of what interest, if any, the Yankton Indians possessed in the Pipestone Quarry which was to be referred to the Supreme Court was inserted in the agreement of 1892 in consequence of speeches made to the commission, which negotiated the treaty, by members of the tribe, and it was thought best by the commission to settle the controversy and satisfy the Indians in this way. The question as to procedure was referred to the Attorney General, who informed the Secretary of the Interior that it was a practical impossibility to refer the question to the Supreme Court. (Rec., pp. 17, 18.)

The ignorance of the commission in adopting this method of settlement was on a par with that of the Yanktons in construing their right to procure stones for their pipes as conveying to them a

fee simple title to the Pipestone Quarry and the land on which it stands.

THE YANKTON AGREEMENT OF 1899.

The act of June 7, 1897 (30 Stat., 87), contained a clause that—

The Secretary of the Interior is directed to negotiate, through an Indian inspector, with the Yankton Tribe of Indians of South Dakota, for the purchase of a parcel of land near Pipestone, Minn., on which is located an Indian industrial school.

In pursuance of the above act the Secretary of the Interior was directed to negotiate with the Yankton Indians for the cession of all their rights to the Pipestone Quarry. Accordingly Inspector McLaughlin entered into an agreement with them for their interest in the Pipestone Quarry for a consideration of \$100,000, and on October 9, 1899, transmitted the agreement and the proceedings of the council to the Commissioner of Indian Affairs. The agreement was afterwards transmitted to Congress by the Department of the Interior on March 24, 1900, and the agreement and council proceedings were printed as House of Representatives Document No. 535, Fifty-fifth Congress, first session.

On March 3, 1903, Senator Quarles, afterwards United States circuit judge (from the Senate Committee on Indian Affairs), submitted an adverse report on Senate bill 1472, ratifying the agreement. The report, after quoting Article VIII

of the treaty of April 19, 1858, said that the only title which the Yanktons possessed to the Pipestone Quarry was in the nature of an easement; and, referring to the failure of the Secretary of the Interior to submit the question of title to the Supreme Court, said that such a course was a legal and practical impossibility, as it had no original jurisdiction to construe the treaty (Senate Rept. No. 3316, 57th Cong., 2d sess. Vol. Docs. filed by defendants June 13, 1912, p. 178). After this report no further action was taken on the bill. (Rec., p. 18.)

ARGUMENT.

THE INDIAN TITLE.

We have shown by overwhelming and uncontradicted testimony that the Mississippi Sioux, composed of the Sisseton, Wahpeton, Medawakanton, and Wahpekoota Bands, were in exclusive and undisputed possession from time immemorial of the country on which the Pipestone Quarry is situated, and that the extreme eastern boundary of the Yankton country for the same period was the Big Sioux River, which runs about 14 miles west of the Pipestone Quarry. The Mississippi Sioux conveyed their title by possession to the United States by the treaties of 1851.

The Supreme Court has always held that the fee to Indian tribal lands is in the United States, but that "the right of the Indians to their occupancy is as sacred as that of the United States to

the fee, but it is only a right of occupancy. The possession, when abandoned by the Indians, attaches itself to the fee without further grant." (*United States v. Cook*, 19 Wall. 591; *Beecher v. Wetherby*, 95 U. S. 517, 525, 526.)

THE INTEREST OF THE YANKTONS IN THE PIPESTONE QUARRY UNDER ARTICLE 8 OF THE AGREEMENT OF 1858.

When the Government gave the Yankton Indians the right "to procure stones for their pipes" from the Pipestone Quarry, it had a fee simple title and undisputed possession of the quarry. In order to procure the necessary signatures to the treaty of 1858 with the Yanktons, it gave them the right to use the quarry for that purpose and for that purpose only. This was a right which the Indian tribes sufficiently near had exercised from time immemorial until they were stopped by the Sioux at the instigation of the whites about 1830, after which all of the tribes or bands of the Sioux still continued to visit the Pipestone Quarry for the purpose of procuring stones for pipes and ornaments, and continued to do so even after the possessory title passed to the United States in 1851. The question of the extent of the interest of the Yankton Indians in the Pipestone Quarry came up when the Secretary of the Interior established Indian schools on the Pipestone Reservation under section 2 of the act of February 16, 1891 (26 Stat., 764), which pro-

vided "that the Secretary of the Interior may select any part or portion of nonmineral public domain of the United States in either of the said States (Wisconsin, Michigan, or Minnesota) which he may deem necessary and equitable, not exceeding 40 acres, etc." The Yankton Indians claimed compensation for the lands occupied by the school buildings, and the Assistant Attorney General for the Interior Department on February 17, 1891, rendered an opinion, in which he held that the Yanktons were not entitled to compensation, because their right to take stone for pipes was not infringed upon, and that they did not suffer any damage from the construction of the buildings. (Rep. of Commr. of Indian Affairs, 1892, p. 60.)

The language of article 8 of the treaty of 1858 referred to above (ante, p. 137) is so clear that it is difficult to see how any other construction could be placed upon it. This was also the construction placed upon it by the Senate Committee on Indian Affairs in the report submitted by Senator Quarles, a very able lawyer and afterwards a United States circuit judge (ante, p. 18).

The Supreme Court in the case of *United States v. Carpenter* (111 U. S., 347) held that it was entirely optional with the United States as to how much of the quarry should be retained by the United States to enable the Yankton Indians to procure stone for their pipes. The only thing decided was that the officers of the Government

could not deprive the Indians of the right to quarry stone for that purpose by disposing of the land to private parties.

The Supreme Court in the case of the *United States v. The Mille Lac Chippewas* (229 U. S., 498, 500), said:

The jurisdictional act makes no admission of liability, or of any ground of liability, on the part of the Government, but merely provides a forum for the adjudication of the claim according to applicable legal principles. Nor does it contemplate that recovery may be founded upon any merely moral obligation not expressed in pertinent treaties or statutes, or upon any interpretation of either that fails to give effect to their plain import, because of any supposed injustice to the Indians. *United States v. Old Settlers*, 148 U. S., 427, 469; *United States v. Choctaw, etc., Nations*, 179 U. S., 494, 735; *Sac and Fox Indians*, 220 U. S., 481, 489.

WHAT ADDITIONAL INTEREST, IF ANY, DID THE YANKTONS ACQUIRE IN THE PIPESTONE QUARRY BY REASON OF THE AGREEMENT OF DECEMBER 31, 1892.

Article XVI of the agreement of December 31, 1892, quoted above (ante, pp. 139, 140), stipulated that if the Government of the United States questions the ownership of the Pipestone Reservation, the Secretary of the Interior shall, as speedily as possible, refer the matter to the Supreme Court

of the United States to be decided by that court, and if the United States failed to do so within one year after the ratification of the agreement the reservation should be the sole property of the Yanktons.

The question was not submitted to the Supreme Court for the reason that the Department of Justice advised the Secretary of the Interior that it was impracticable to do so.

The adverse report of the Senate Committee on Indian Affairs on bill (S. 1472, 57th Cong., 2d sess.), ratifying the agreement of October 2, 1899, to pay the Yanktons \$100,000, concluded with the following statement:

We understand the law to be that where a forfeiture is hinged upon a condition impossible of performance the convention fails to that extent and no forfeiture can be insisted upon. To hold otherwise in this case would be subversive of justice, because there was in fact no such question or dispute regarding the title of the tribe as should have ever been submitted to the court at all. It is practically conceded by every lawyer upon the committee that the only title that the tribe had was in the nature of an easement, and that the Supreme Court must have so decided if the proposition could have been there submitted. To contend, therefore, that the naked failure to comply with this condition should result in forfeiture of the Government's title is carrying the doctrine of for-

feiture to the verge of absurdity. Applying to this question the broad principles of justice which ought to prevail, your committee feels constrained to recommend that the said agreement be reported adversely. (See small volume of documents filed by defendants June 13, 1912, p. 179.)

The Supreme Court in the case of *Muskrat v. The United States* (219, U. S., 346), held that it was beyond the power of Congress to refer an act to that court for construction; that from its earliest history the court had consistently declined to exercise any powers other than those which are strictly judicial in their nature; that under the Constitution of the United States the judicial power of the court was limited to cases and controversies in which there were present or possible adverse parties whose contentions are submitted to the court for adjudication. The Supreme Court even went so far as to hold that this court has no jurisdiction of such a question where there is a right of appeal to it.

It is clear, therefore, that the law prohibited the Secretary of the Interior from referring the question propounded by Article XVI of the agreement of December 31, 1892, to the Supreme Court at the time the agreement was made. The agreement as to that question, therefore, was null and void. (*Knapp v. The United States*, No. 33071, 52 C. Cls., —, and cases cited; *Bailey v. De Crespigny*, L. R., 4 Q. B., 180; *Slipper v.*

Totterham & Hampstead Junction R. Co., L. R. Eq., 112; *Scovill v. McMahon*, 62 Conn., 378; *Heine v. Meyer*, 61 N. Y., 171.)

CONCLUSION.

It is therefore clear that the only title or interest that the Yankton Indians have in the Pipestone Quarry is the privilege of procuring stones for their pipes, and as long as the Government does not interfere with them in the exercise of that right they have no cause of complaint against the United States.

Respectfully,

GEO. M. ANDERSON,
Attorney for the Defendants.



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